



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS

Dennis Kennedy, Mayor
Steve Tate, Mayor Pro Tempore
Larry Carr, Council Member
Mark Grzan, Council Member
Greg Sellers, Council Member

REDEVELOPMENT AGENCY

Dennis Kennedy, Chair
Steve Tate, Vice-Chair
Larry Carr, Agency Member
Mark Grzan, Agency Member
Greg Sellers, Agency Member

REMOTE LOCATION PARTICIPANT

Steve Tate, Council/Agency Member
6825 E. 4th Street
Scottsdale, AZ 85251
(Closed Sessions Only)

WEDNESDAY, MARCH 16, 2005

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

March as Red Cross Month
Pat Moore, Red Cross Disaster Services Volunteer

CITY COUNCIL REPORT

Council Member Sellers

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

City Council Action

CONSENT CALENDAR:

ITEMS 1-12 The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

1. **PURCHASE OF POLICE DEPARTMENT VEHICLES**7
Recommended Action(s):
 1. **Authorize** Vehicle Purchases and Police Equipment Build Outs Through The Ford Store Morgan Hill for Vehicles Identified in the Report for a Total Cost of \$168,400; and
 2. **Declare** Vehicles #P91502, #P96230, #P95201, and #P96302 as Surplus, and **Authorize** Sale at Auction.
2. **APPROVAL OF CONSULTANT AGREEMENT AMENDMENT WITH HARRIS & ASSOCIATES FOR 2003-2004 PAVEMENT RESURFACING PROJECT**10.
Recommended Action(s): Approve Consultant Agreement Amendment in the Amount of \$10,500 with Harris and Associates for Providing Additional Construction Inspection Services for the 2003-2004 Pavement Resurfacing Project; Subject to Review and Approval by the City Attorney.
3. **FINAL MAP APPROVAL FOR MISSION RANCH PHASE VIII (TRACT 9657)**11
Recommended Action(s):
 1. **Approve** the Final Map, Subdivision Agreement, and Improvement Plans;
 2. **Authorize** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and
 3. **Authorize** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.
4. **UTILITIES AND ENVIRONMENT SUBCOMMITTEE MINUTES OF FEBRUARY 28, 2005**12
Recommended Action(s):
 1. **Review** Minutes; and
 2. **Select** Items for Additional Discussion, as Needed.
5. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR GATEWAY CENTER PHASE I**16
Recommended Action(s):
 1. **Adopt** the Resolution Accepting the Public Improvements for Gateway Center Phase I; and
 2. **Direct** the City Clerk to File the Notice of Completion with the County Recorder's Office.

Time Estimate
Consent Calendar: 1 - 10 Minutes

Page

6. [**ACCEPTANCE OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I PROJECT**](#)20
Recommended Action(s):
 1. **Accept** as Complete the Edmundson Water Main Distribution, Phase I Project in the Final Amount of \$382,553; and
 2. **Direct** the City Clerk to File the Notice of Completion with the County Recorder's Office.

7. [**MORGAN HILL LIBRARY SCHEDULE AND ARCHITECT'S FEE AMENDMENT**](#)22
Recommended Action(s):
 1. **Accept** Schedule; and
 2. **Authorize** the City Manager to Prepare and Execute an Amendment to the Contract with Noll and Tam in the Amount of \$210,200, Subject to Review and Approval by the City Attorney.

8. [**AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT**](#)23
Recommended Action(s):
 1. **Authorize** the Appropriation of \$100,000 from the Unappropriated Water Fund Balance into Account 650-42230-5710 to Fund the Continuing Legal Services of Hatch & Parent; and
 2. **Authorize** the City Manager to Execute an Amendment to Agreement with the Law Firm of Hatch & Parent; Subject to Review and Approval by the City Attorney.

9. [**THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**](#)24
Recommended Action(s): **Authorize** the City Manager to Execute a Third Amendment to Agreement with the Strombotne Law Firm.

10. [**CONTINUATION OF ORDINANCE NO. 1714, NEW SERIES**](#)25
Recommended Action(s): **Continue the Adoption** of Ordinance No. 1714, New Series, to April 6, 2005. Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS).**

11. [**ADOPT ORDINANCE NO. 1715, NEW SERIES**](#)26
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1715, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT).**

12. [**ACCEPTANCE OF DONATIONS FOR THE AQUATICS CENTER FROM MORGAN HILL AQUATIC CENTER, INC. \(Continued from 2/16/05\)**](#)30
Recommended Action(s): **Accept** Donations by the Morgan Hill Aquatics Center, Inc. to the Aquatics Center.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

ITEMS 13-14

	Time Estimate	Page
	Consent Calendar: 1 - 10 Minutes	
13.	<u>APPROVE JOINT REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 23, 2005</u>	31
14.	<u>APPROVE JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 2, 2005</u>	61

City Council Action (continued)

CONSENT CALENDAR:

ITEM 15

	Time Estimate	Page
	Consent Calendar: 1 - 10 Minutes	
15.	<u>ACCEPTANCE OF PAVEMENT RESURFACING PROJECT FOR 2003-2004</u>	76
	<u>Recommended Action(s):</u>	
	1. <u>Appropriate</u> an Additional \$16,688 in Unappropriated Measure C Capital Improvement Project (CIP) Funds which Accrue to the Public Facility/Non-AB1600 (346) Fund for this Project;	
	2. <u>Accept</u> as Complete the 2003-2004 Street Resurfacing Project in the Final Amount of \$671,378.39, Including Approval of Change Orders 4, 5, 8, and 9; and	
	3. <u>Direct</u> the City Clerk to File the Notice of Completion with the County Recorder's Office.	

City Council Action

PUBLIC HEARINGS:

	Time Estimate	Page
16.	10 Minutes	
	<u>ZONING AMENDMENT, ZAA-02-18: COCHRANE - IN-N-OUT BURGER</u>	78
	Public Hearing Opened.	
	Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
	Council Discussion.	
	Action- <u>Motion to Waive</u> the Reading in Full of Zoning Amendment Ordinance.	
	Action- <u>Motion to Introduce</u> Ordinance by Title Only. (Roll Call Vote)	

PUBLIC HEARINGS:

	Time Estimate		Page
17.	5 Minutes	<u>ZONING AMENDMENT, ZA-04-15/DEVELOPMENT AGREEMENT, DA-04-13: HILL-GERA</u>	83
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Approve</u> Mitigated Negative Declaration.	
		Action- <u>Motion to Waive</u> the Reading in Full of Zoning Amendment Ordinance.	
		Action- <u>Motion to Introduce</u> Zoning Amendment Ordinance by Title Only. (Roll Call Vote)	
		Action- <u>Motion to Waive</u> the Reading in Full of Development Agreement Ordinance.	
		Action- <u>Motion to Introduce</u> Development Agreement Ordinance by Title Only. (Roll Call Vote)	
18.	10 Minutes	<u>ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR COMPANY</u>	106
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Motion to Waive</u> the Reading in Full of Ordinance Amending Section 18.76.250.H.1.B of the Municipal Code.	
		Action- <u>Motion to Introduce</u> Ordinance by Title Only. (Roll Call Vote)	
19.	10 Minutes	<u>WATER CONSERVATION SUBMETERING ORDINANCE</u>	111
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Motion to Waive</u> the Reading in Full of Ordinance Amending Chapter 13.04 (Water System) of the Municipal Code.	
		Action- <u>Motion to Introduce</u> Ordinance by Title Only. (Roll Call Vote)	

City Council Action

OTHER BUSINESS:

	Time Estimate		Page
20.	10 Minutes	<u>PROPOSED VEHICLE REGISTRATION SURCHARGE FOR SANTA CLARA COUNTY</u>	115
		<u>Recommended Action(s):</u>	
		1. <u>Accept</u> Report from Council Regional Planning and Transportation Subcommittee; and	
		2. <u>Consider</u> Adoption of Resolution Supporting the Proposed Senate Bill 680 (Simitan) Imposing a \$5.00 Surcharge on Vehicle Registrations in Santa Clara County Annually for a Period of Eight Years to Fund Specified Transportation Improvements.	

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

Agenda Item # 1

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager

PURCHASE OF POLICE DEPARTMENT VEHICLES

RECOMMENDED ACTION(S):

1. Authorize vehicle purchases and police equipment build outs through The Ford Store Morgan Hill for the vehicles identified in this report for a total cost of \$168,400.
2. Declare Vehicle #P91502, #P96230, #P95201 and #P96302 on attached spreadsheet as surplus and authorize sale at auction.

EXECUTIVE SUMMARY:

The Police Department is requesting the replacement of five vehicles in the 2004/2005 budget year. The attached spreadsheet identifies the vehicles being replaced and the funding source. The total cost for the five vehicles and police equipment build out is \$168,400.

In 1996 the City applied for and received a Ford Motor Company Fleet Identification Number (FIN). The FIN grants the City a standard government fleet price (discount) set by Ford Motor Company on any vehicle purchased at any dealership. Because the vehicles the Police Department required were not available on the State bid this year, The Ford Store Morgan Hill used our FIN and in addition, applied for and received a special fleet concession available to municipalities not using State pricing. This concession allows us to receive the benefit of a government discount when a model has not been bid by the State. A third discount was received from the owner of The Ford Store Morgan Hill when he adjusted the final price. Informal bids from Folsom Ford and Lynch Ford were higher than the bid from The Ford Store. Section 3.04.150 MHMC allows "that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder, or would cause unnecessary expense or delay under the circumstances".

The Ford Store is also extending us the courtesy of working with our current vendor (Emergency Vehicle Systems) at EVS's cost to install the equipment on the police vehicles. This is a savings in staff time and turn around time for the vehicles.

The Department is aware of budget constraints and has evaluated the needs in regard to the replacement of vehicles. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

Attached is a spreadsheet showing the vehicles we are asking Council to declare as surplus and authorize sale at auction.

FISCAL IMPACT:

The cost of these vehicles is funded in the Vehicle Replacement Fund.

2004-2005 REPLACEMENT

POLICE DEPARTMENT

VEHICLE	REPLACE WITH:	COMMENTS/STATUS	COST	FUNDING/DIVISION
P91502 1991 Ford 2500	NEW-Approved at City Council Meeting 12-01-04 BAHS to purchase through State Contract 2005 Chevrolet Silverado Truck State Stock #2320-009-0402-0	P91502 will be surplused. P91502 has approximately 111,900 miles, needs a transmission and steering replacement and is poor operating condition. Public Works originally transferred this surplused vehicle to Police for the Graffiti Program. Graffiti Abatement is now funded by BAHS and the new vehicle will be placed in the 790-BAHS fund with contributions.	\$15,780	790-43830-8500 BAHS
P04101 2004 Ford Police Interceptor	NEW-PATROL SGT. FIELD SUPERVISOR 2005 Ford Expedition THE FORD STORE	P04101 has approximately 17,900 miles. This vehicle was replaced in October 2003 when the vehicle was totaled by a DUI driver. Because of the low mileage, it will be assigned to the Traffic Unit/School Resource Officer. P95201 will be surplused (Traffic Unit) due to mileage and maintenance issues. P04101 will continue in the 790-POLICE fund with contributions.	\$46,900	790-43830-8500 POLICE
P00102 2000 Ford Police Interceptor	NEW- PATROL SGT. FIELD SUPERVISOR 2005 Ford Expedition THE FORD STORE	P00102 has approximately 68,400 miles. This vehicle will be assigned to the School Resource Officer who usually drives only a few miles. The second SRO position is funded by the COPS Grant and no vehicle has been allotted. P00102 will continue in the 790-POLICE fund with contributions.	\$46,900	790-43830-8500 POLICE
P00401 2000 Chevrolet Impala	NEW-CHIEF OF POLICE 2005 Ford 500 THE FORD STORE	P00401 has approximately 93,000 miles. Due to the mileage yet good condition, this vehicle will be re-assigned to the Special Operations Supervisor. P96230 (66,100 miles) from Special Ops and P96302 (93,165 miles) from Cadet/CSO will be surplused due to high maintenance costs. P00401 will continue in the 790-POLICE fund with contributions.	\$35,490	790-43830-8500 POLICE

VEHICLE	REPLACE WITH:	COMMENTS/STATUS	COST	FUNDING/DIVISION
P00231 2000 Chevrolet Malibu	NEW-SPECIAL OPERATIONS LIEUTENANT 2005 Ford Taurus THE FORD STORE	P00231 has approximately 44,000 miles. Due to the low mileage, this vehicle will be re-assigned to Special Operations-Investigator. P00231 will continue in the 790-POLICE fund with contributions.	\$19,555	790-43830-8500 POLICE
P96402 1996 Ford Taurus	NEW-FIELD OPERATIONS LIEUTENANT 2005 Ford Taurus THE FORD STORE	P96402 has approximately 69,200 miles. Due to the mileage, this vehicle will be re-assigned to the Support Services Division for use by the Supervisor and staff to go to City/County meetings/offices. P96402 will continue in the 790-POLICE fund with contributions.	\$19,555	790-43830-8500 POLICE

SURPLUSED VEHICLES AND EQUIPMENT

POLICE DEPARTMENT

P91502	1991 FORD 2500 TRUCK (111,900 MILES; TRANSMISSION/STEERING PROBLEMS)
P96230	1996 CHEVROLET CORSICA (66,100 MILES; HIGH MAINTENANCE COSTS)
P95201	1995 CHEVROLET CAPRICE (66,725 MILES; MAINTENANCE ISSUES)
P96302	1996 CHEVROLET CAPRICE (93,165 MILES; HIGH MILEAGE/MAINTENANCE PROBLEMS)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

APPROVAL OF CONSULTANT AGREEMENT AMENDMENT WITH HARRIS & ASSOCIATES FOR 03/04 PAVEMENT RESURFACING PROJECT

RECOMMENDED ACTION: Approve consultant agreement amendment in the amount of \$10, 500 with Harris and Associates for providing additional construction inspection services for the 2003-04 Pavement Resurfacing Project.

EXECUTIVE SUMMARY: On July 21, 2004 Council awarded a contract to Harris and Associates for \$32,310 for inspection services for our 03/04 Pavement Resurfacing Project. On November 3, 2004 Council approved an amendment to this contract for \$9,000 for additional inspection services. Due to the amount of extra work performed, an additional amendment to the professional services contract is needed at this time for inspection services to complete the project in the amount of \$10,500.

FISCAL IMPACT: There is sufficient funding in the project CIP budget (519096) to fund these additional services.

Agenda Item # 2

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 16, 2005

FINAL MAP APPROVAL FOR MISSION RANCH PH. VIII (TRACT 9657)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9657 is a 27 lot subdivision located on the southeast corner of the Cochrane Road and Peet Road intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on July 27, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item #3

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

UTILITIES AND ENVIRONMENT SUBCOMMITTEE MINUTES FOR FEBRUARY 28, 2005

RECOMMENDED ACTION(S):

1. Review Attached Minutes
2. Pull Items For Additional Discussion As Needed

Agenda Item # 4

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: The City's new Utilities and Environment Subcommittee had its first meeting on February 28. At this meeting, the Subcommittee made the following decisions:

1. Established a regular meeting time of 5:30 PM on the third Monday of each month;
2. Established a preliminary list of issues the Subcommittee intends to address in 2005 as detailed in the attached draft minutes;
3. Directed staff to contact the Audubon Society to discuss the potential cosponsorship of an educational workshop for the community on the Endangered Species Act;
4. Approved, in concept, the submission of a grant proposal to the Santa Clara Valley Water District for a new trail alongside West Little Llagas Creek and the adoption of a resolution designating a Wildlife Education Zone;
5. Asked staff to agendize a discussion on ways to properly integrate development with creeks at a future Subcommittee meeting.

If a member of the City Council desires additional information on Subcommittee actions, would like to provide input to the Subcommittee on issues before the Subcommittee, or would like the full Council to discuss an issue to ensure that the Subcommittee's decisions are consistent with the full Council's interests, this item presents the opportunity to pull the item from the Consent Calendar in order to have the discussion.

The Subcommittee meets next on March 21 with the following items planned for the agenda:

Perchlorate Update
Community Choice Aggregation
Water Conservation Design Ordinance
Update on Development Planned Along Local Creeks
Subcommittee Mission
Earth Day Activities
Solid Waste Rate Adjustment
Approval of Draft Minutes

FISCAL IMPACT: No budget adjustment is requested at this time.



17555 PEAK AVENUE MORGAN HILL, CALIFORNIA 95037

Morgan Hill Civic Center
West Conference Room
17555 Peak Avenue
Morgan Hill, California

Chairperson: Council Member Mark Grzan
Subcommittee Member: Mayor Dennis Kennedy
Staff: Director of Public Works Jim Ashcraft

UTILITIES AND ENVIRONMENT SUBCOMMITTEE

ACTION MINUTES

February 28, 2005

5:30 p.m.

CALL TO ORDER

DECLARATION OF POSTING OF AGENDA

PUBLIC COMMENTS

BUSINESS:

1. Establishment of Regular Subcommittee Meeting Time and Location: The Subcommittee established a regular meeting schedule of 5:30 – 6:30 pm on the 3rd Monday of the month. Meetings will occur in the City Council Chambers.
2. Potential Subcommittee Issues in 2005: The Subcommittee provided direction to staff on the scheduling of future topics. An initial tentative agenda is attached. In addition, the Subcommittee asked staff to alter the perchlorate testing schedule so that fresh results of the monthly testing could be provided to the Subcommittee. Staff was also asked to work with Councilmember Sellers on determining which Subcommittee has appropriate jurisdiction over the cell tower siting ordinance. Staff was asked to ask the City Manager to evaluate the Subcommittee structures including possible mission statements and work plan in San Jose and Santa Clara County to determine if there are procedures in place there that Morgan Hill could benefit from.
3. Endangered Species Act Education: Councilmember Grzan indicated that the Audubon Society is interested in providing training on the Endangered Species Act with the City's co-sponsorship. Staff was asked to get additional details from Craig Breon and propose co-sponsorship to the full Council.
4. Trails Grant and Designation of Wildlife Education Zone: The Subcommittee supported the planned grant proposal. Staff will work with Subcommittee members on the language for the resolution for the Wildlife Education Zone before the item comes to the Council.
5. Draft 2/05 SCVWD Collaborative Guidelines and Standards for Land Use Near Streams: The Subcommittee accepted this informational item and asked staff to agendize a discussion

on ways to properly integrate development with creeks and adopt an ordinance mandating that these changes take effect as soon as possible.

FUTURE SUBCOMMITTEE-INITIATED AGENDA ITEMS: as indicated on Tentative Agenda below

ADJOURNMENT

Utilities and Environment Subcommittee
Tentative Agenda as of March 1, 2005

March 21

Perchlorate Update
Community Choice Aggregation
Water Conservation Design Ordinance
Subcommittee Mission
Earth Day Activities

April 18

Perchlorate Update
Solid Waste Changes
Wireless Internet Access

May 16

Perchlorate Update
Well Production Report
Water Quality Annual Report

June 20

Well Production Report
Perchlorate Update

July 18

Well Production Report
Perchlorate Update

August 15

Well Production Report
Perchlorate Update
Water Rates

September 19

Well Production Report
Perchlorate Update

October 17
Well Production Report
Perchlorate Update

November 21
Perchlorate Update

December 19
Perchlorate Update

Additional Unscheduled Issues

Habitat Conservation Plan
Energy Development



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR GATEWAY CENTER PHASE I

RECOMMENDED ACTION(S):

1. Adopt the attached resolution accepting the public improvements for Gateway Center Phase I.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY: The Gateway Center project is a 4 lot commercial subdivision located on the west side of Monterey Road just south of the Capri Restaurant (see attached location map). The subdivision improvements for phase I have been completed in accordance with the requirements of the Subdivision Improvement Agreement between the City of Morgan Hill and South Valley Developers, Inc. dated December 16, 2002 and as specifically set forth in the plans and specifications approved by the City.

FISCAL IMPACT: All City costs are paid by development fees.

Agenda Item # 5

Prepared By:

Senior Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE PUBLIC
IMPROVEMENTS FOR GATEWAY CENTER PHASE I**

WHEREAS, South Valley Developers, Inc., the developer of the Gateway Center Phase I, entered into a Subdivision Improvement on December 16, 2002; and

WHEREAS, Jim Ashcraft, Public Works Director, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said development,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Subdivision Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance period.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the public improvements.
4. If requested by the developer, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED this 16th day of March, 2005.

AYES:

NOES:

ABSENT:

ABSTAIN:

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at the Regular City Council Meeting of March 16, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, City Clerk

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

NOTICE OF COMPLETION

CITY OF MORGAN HILL

GATEWAY CENTER PHASE I

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on February 28, 2005, by South Valley Developers, Inc. the developer of record and accepted by the City Council on March 16, 2005. Said improvements consisted of public streets, utilities and appurtenances.

The name of the surety on the contractor's bond for labor and material on said project is American Motorists Insurance Company.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2005.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date: _____

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE PUBLIC IMPROVEMENTS
FOR GATEWAY CENTER PHASE I**

WHEREAS, South Valley Developers, Inc., the developer of the Gateway Center Phase I, entered into a Subdivision Improvement on December 16, 2002; and

WHEREAS, Jim Ashcraft, Public Works Director, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said development,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Subdivision Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance period.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the public improvements.
4. If requested by the developer, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 16th Day of March, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦋 CERTIFICATION 🦋

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on March 16, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 16, 2005

ACCEPTANCE OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Edmundson Water Main Distribution, Phase I project in the final amount of \$382,553.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's Office.

EXECUTIVE SUMMARY:

The construction contract for the Edmundson Water Main Distribution, Phase I project was awarded to McGuire and Hester by City Council at their June 16, 2004 meeting in the amount of \$349,699, plus a ten percent contingency of \$34,970.

The scope of work for this project included installing a new 16" ductile iron water main along Cosmo Avenue between Monterey Road and Del Monte Avenue, including new valves/fittings and connections. During construction, three change orders totaling \$28,554 were approved for unforeseen conditions. An additional amount of \$4,300 was incurred due to differences between actual measured quantities and estimated bid quantities. The final construction cost totaled \$382,553.

The work was substantially complete by October 14, 2004 in accordance with the Contract, Plans and Specifications.

FISCAL IMPACT:

The total construction cost was \$382,553. The project was funded from CIP Project Number 619002 with a total project budget of \$660,000 from fiscal year 2003-2004.

Agenda Item #6

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL

EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 8th day of July, 2004, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to McGuire and Hester, on July 23, 2003, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on October 14, 2004, accepted by the City Council on March 16, 2005, and that the name of the surety on the contractor's bond for labor and materials on said project is McGuire and Hester as Principal and Western Surety Company as Surety.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2005.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

MORGAN HILL LIBRARY

Schedule and Architect's Fee Amendment

RECOMMENDED ACTION(S): 1) Accept schedule and 2) authorize the City Manager to prepare and execute an amendment to the contract with Noll and Tam in the amount of \$210,200

EXECUTIVE SUMMARY:

At the January 26, 2005 meeting, Council directed staff to enter into an agreement with TBI Construction Management, Inc. to manage the design and construction of the New Morgan Hill Library Project. TBI has worked with the architects and staff developing a schedule that is aggressive while trying to minimize the project risks. The proposed schedule includes a compressed design schedule with minimal review time by the City Council in order to open spring 2007. The schedule milestones are as follows:

Schematic Design and Estimate Complete	April 29, 05
Council / Library Commission Review	May 4, 05
Design Development / Construction Doc. Complete	Dec. 7, 05
Bid Openings	Jan. 27, 06
Council Authorization to Award Construction Contract	Feb. 16, 06
Construction Starts	March 13, 06
Substantial Completion	April 3, 07
Final Completion of Building	May 1, 07

The length of time it took to get the project started resulted in increases in professional service fees. The consultant agreement with Noll & Tam was executed in July of 2001 for \$1,058,019. The agreement did allow for a cost adjustment to future billing rates for the architect and their sub-consultants. Also the scope of the site civil work has grown as it became more defined resulting in increased civil engineering services. Staff also is recommending adding services that were not included in the architect's original agreement. These services include mechanical and electrical commissioning to ensure all systems are functioning properly prior to occupancy, additional telecommunications and security system electrical rough-in design and drawings and signage design. The fee also includes anticipated increase in reimbursable costs. Staff has negotiated a professional service increase of \$210,200 to accommodate the cost of living increase, increased civil engineering work and the additional services. Staff is requesting authorization to amend the Architects agreement to \$1,268,219 which includes \$75,000 reimbursable expenses. The new professional service fee will be approximately 10 % of the proposed construction cost.

Attached is a letter from Santa Clara County Library stating they will need six weeks from May 1, 2007 to move in.

FISCAL IMPACT: Sufficient funds exist in the Library CIP project budget soft costs for this amendment in professional service fees.

Agenda Item # 7

Prepared By:

Sr. Project Manager

Approved By:

Recreation Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

Agenda Item # 8

Submitted By:

City Manager

AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT

RECOMMENDED ACTIONS:

1. Authorize the appropriation of \$100,000 from the unappropriated Water Fund Balance into account 650-42230-5710 to fund the continuing legal services of Hatch & Parent.
2. Authorize the City Manager to execute an Amendment to Agreement with the law firm of Hatch & Parent.

EXECUTIVE SUMMARY:

On May 21, 2002, the City contracted with the law firm of Hatch & Parent to provide the City with legal services in connection with the perchlorate land and water contamination. On September 15, 2004, Council approved a contract with Hatch & Parent in the amount of \$100,000. As this matter is ongoing, staff is recommending that Council approve the attached Amendment to Agreement to increase the amount to \$250,000 to cover Hatch & Parent's continuing representation of the City's interests, as well as ongoing work by experts on the matter.

A \$100,000 adjustment to the Water Operation Special Counsel Account (650-42230-5710) will be sufficient to fund the amendment to agreement for ongoing legal services.

FISCAL IMPACT

With the requested appropriation from the unappropriated Water Fund balance, sufficient funds are available in the Water Operations fund (650-42230-5710).



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

TITLE: THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Third Amendment to Agreement with the Strombotne Law Firm.

EXECUTIVE SUMMARY:

On September 23, 2003, the City contracted with the Strombotne Law Firm to handle pre-litigation negotiations and, if necessary, initiate litigation against VBN Corporation. On November 3, 2003, the Strombotne Law Firm filed suit on behalf of the City against VBN Corporation and ABSG Consulting, Inc., for breach of contract and professional negligence regarding construction of the Community and Cultural Center. On January 21, 2004, the City Council authorized increasing the contract amount to \$40,000 to cover the anticipated fees and costs associated with the initial pretrial discovery in preparation for mediation. A mediation was held on June 30, 2004. The parties were unable to reach a settlement.

On August 18, 2004, Council approved a Second Amendment to Agreement increasing the contract amount to \$100,000 to conduct post-mediation discovery, including the possible retention of experts, in anticipation of trial. The parties reached a settlement prior to trial. The attached Third Amendment to Agreement is in the amount of \$112,000. It is anticipated that the additional \$12,000 will be sufficient to cover the fees and costs associated with preparation of the closing documents and finalizing the settlement. Therefore, staff is recommending that Council approve the attached Third Amendment to Agreement in the amount of \$112,000.

FISCAL IMPACT:

The cost of this agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.

Agenda Item # 9

Prepared By:

(Title)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

Agenda Item # 10

Prepared By:

City Clerk

Submitted By:

City Manager

ORDINANCE NO. 1714, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS)

RECOMMENDED ACTION(S):

Continue the Adoption of Ordinance No. 1714, New Series, to April 6, 2005.

EXECUTIVE SUMMARY:

On March 2, 2005, the City Council Introduced Ordinance No. 1714, New Series, by the Following Roll Call Vote: AYES: Grzan, Kennedy, Sellers; NOES: Carr; ABSTAIN: None; ABSENT: Tate. Staff is proposing to return with Ordinance No. 1714, New Series, as introduced by the Council for adoption on April 6, 2005. Staff is also proposing to return with a modified version of the Ordinance to clarify the provisions.

FISCAL IMPACT: No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1715, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1715, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 2, 2005, the City Council Introduced Ordinance No. 1715, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1715, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the General Plan and Zoning Ordinance.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. INCORPORATING ZONING TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to Chapter 18.56 Exceptions and Modification and Title 18 of the Morgan Hill Municipal Code, contained in the attached Exhibit "A."

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 2nd Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of March 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1715, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of March 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

Section 18.56.070 Fences and hedges

- A. No fence or hedge shall be constructed or grown to exceed ~~six~~ **seven** feet in height on any property line to the rear of the front setback line of any property, ***except that the section of fence above six feet shall be uniformly open to the passage of light and air, as determined by the community development director***, nor to exceed three feet in height from the front setback line of any property to the street right-of-way line except as may be allowed by Section 18.56.150(A)(1) of this chapter.
- B. A visibility clearance area shall be required on corner lots in which nothing shall be erected, placed, planted, or allowed to grow exceeding three feet in height. Such area shall consist of a triangular area bounded by the street right-of-way lines of such corner lots and a line joining points along said street lines twenty feet from the point of intersection.
- C. ***Corner Lots. Side setback area: Any fence over three feet in height shall be set back five feet on any side yard setback, which is adjacent to a street.***
- D. ***Prohibited Fences. Barbed wire, razor wire, and electric fences are prohibited from use on any parcel of property in the city that is used for residential purposes.***

Section 18.56.150 Minor exceptions.

- A. Authority. To ensure compatibility with surrounding uses and to preserve the public health, safety, and welfare, the community development director is authorized to grant a minor exception to the following code requirements:
 - 1. Fence Height.
 - a. In any district the maximum height of any fence, wall, hedge or equivalent screening may be increased by ***two feet in height within the front setback and one foot in height to the rear of the front setback line of any property*** ~~a maximum of two feet~~, where the topography of sloping sites or a difference in grade between adjoining sites warrants such increase in height to maintain a level of privacy, or to maintain effectiveness of screening, as generally provided by such fence, wall, hedge or screening in similar circumstances. The maximum height of any fence or wall may also be increased by a maximum of ~~two feet~~ ***two feet in height within the front setback and one foot in height to the rear of the front setback line of any property*** when located adjacent to public parks, other public spaces or adjacent to private common area parks and open space and where such increase in height would not unreasonably affect desirable views or vistas or the open space value of abutting sites.



CITY COUNCIL STAFF REPORT
MEETING DATE: March 16, 2005

Agenda Item # 12

Prepared By:

Recreation &
Community Services
Manager

Submitted By:

City Manager

**ACCEPTANCE OF DONATIONS FOR THE AQUATICS
CENTER FROM MORGAN HILL AQUATIC CENTER, INC.**

RECOMMENDED ACTION(S): Accept donations by the
Morgan Hill Aquatics Center Inc to the Aquatics Center

EXECUTIVE SUMMARY:

The Morgan Hill Aquatic Center, Inc. (Foundation) was established in 2001 to subsidize the operational costs of the 50 meter pool during the off-season so there would be a year-round competition/training pool available to swim teams and the community. In that regard, the Morgan Hill Aquatic Center, Inc. (Foundation) has provided subsidized funding for team rental fees, water polo, and masters programs. They have also donated the following items to the city:

Backstroke Flags	\$ 285
3 Starting Blocks	\$4,000
Lane Line Replacement Parts	\$ 235
Storage Shed	<u>\$1,166</u>
Total	\$5,686

Pursuant to the City's Administrative Policy V009 "Donation Policy", donations with estimated values of \$5,000 or more must be formally accepted by the City Council. Separately the items do not met this requirement; however staff is presenting all of the donated items for Council acceptance.

FISCAL IMPACT: \$5,686 in donated supplies to support the competitive pool program(s).

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – FEBRUARY 23, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, Tate and Chairperson/Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairman/Mayor Kennedy, David Reisenauer led the Pledge of Allegiance.

RECOGNITIONS

The presentation of a Certificate of Recognition to Jon Maxey and Jim Tarp in appreciation for the Community and Cultural Center Lighting Installation was deferred to March 2, 2005.

Police Corporal Rodney Reno introduced Gavilan College Art Professor Jane Edberg who painted a child friendly interview room at the Police facility. He indicated that Professor Edberg and Police Detective Shane Palsgrove spent over 340 hours of their own time putting together and painting the room. He indicated that an open house will be held in March 2005 for the Council to be able to view the interview room.

Mayor Kennedy presented a Certificate of Recognition to Artist Jane Edberg in appreciation for her outstanding artistic talents and volunteer spirit in painting a child friendly interview room at the Morgan Hill Police Department.

PRESENTATIONS

Dave Reisenauer presented the Morgan Hill Community Foundation's Annual Report for 2003-04 to the City Council. He indicated that this is the second year he is making a presentation and the Foundation's second year in existence. He presented highlights of the Foundation's second year. To date, the Foundation has donated approximately \$15,000 in 24 different grants to 19 different organizations. He stated that the Foundation has focused on a "Community Non Profit Forum," indicating that two such forums have been conducted. This year, there were over 40 health and human service non profit

organizations from the area in attendance. He stated that this event was co-chaired by United Way of Santa Clara County. There was focus on how the Foundation can help the non profits within the health and human service fields, one of six focus areas. He noted that last year, the Foundation focused on the arts and culture with a result in the formation of the Arts and Cultural Alliance. He stated that the community non profit forum is one that the Foundation is committed to and that it will continue to have these forums each year; bringing the non profit leaders in the community together to talk about common issues, concerns and opportunities for partnerships to better serve the community. He indicated that the Foundation established the Alliance this year based on what it heard from members in the community in terms of need. The Foundation has agreed to allow non profits to become alliances underneath its umbrella, either as a fiscal or program alliance. To date, the Foundation has four fiscal alliance/partners and one program alliance (the Arts & Cultural Program). He stated that the Foundation can provide various aspects of support to non profits or community based organizations. He said that the Foundation's goals for next year will focus on expanding the community forum, focusing on building stronger relationships. Another goal is to expand the Foundation's asset base; looking at different kinds of funds to be established for individuals to be able to donate and be recognized.

CITY COUNCIL SUBCOMMITTEE REPORTS

OTHER REPORTS

Council Member Tate indicated that last week, on consent calendar, the Council endorsed an upcoming mail in ballot measure. He indicated that there are two parts to the measure: 1) continue the existing \$33.66 parcel tax to support the operation of the library; and 2) a modest \$1 per month increase in the parcel tax that would allow the reopening of the library on Mondays and the restoration of some of the services eliminated. He said that it is important to get this measure passed, indicating that there is an effort underway to finance this campaign effort. He stated that a fundraiser event is to be held on March 6 at the Guglielmo Winery, 5-7:30 p.m.

City Manager Tewes said that everyone is concerned about economic development and reported that since January 2005, the City has licensed 120 new businesses in Morgan Hill. Many of these are construction businesses; home based businesses, or businesses with no fixed location. However 28 new businesses have moved into vacant space in the community. Today, the Regional Water Quality Control Board reached an agreement with Olin Corporation on how they are to proceed with the "northeasterly plume." He indicated that the Board has agreed that Olin Corporation will install certain monitoring wells with certain instruments to measure groundwater flow and test for perchlorate, an issue previously resisted by Olin Corporation. He stated that the Water District has agreed to pursue forensic analysis where it may be possible to determine the type of perchlorate and its original location. He said that the City is not pleased that it has to go through this fact finding process because it seems abundantly clear that the perchlorate that has contaminated Morgan Hill wells comes from Olin Corporation. Given that this is the process that the Water District has taken, today's news was relatively good news.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Chris Cote indicated that it is his opinion that Morgan Hill and Gilroy are the most polluted cities in the nine-County Bay Area Air Quality Management District. He stated that he just left a California energy commission meeting at the Coyote Grange Hall where individuals were informed that Calpine Corporation is seeking an increase in the amount of emission allowed from their power plants. He said that this is relatively disappointing news as the southerly air flow pattern will send almost all of the emissions down to South County residents. He informed the Council that the City of Gilroy passed a wireless telecommunication ordinance a few years ago. This ordinance regulates where energy emitting, particularly radiation emitting devices (e.g., cell phone towers and micro wave repeaters), can and should be located. Specifically, the City of Gilroy did not want to see them located near homes and schools. In the two years since the enactment of this ordinance, there has not been one constructed close to homes and schools in Gilroy. However, in other County areas, such an ordinance is not in place. He said that the Pinnacle newspaper reported on a family that is experiencing difficulties today as a result of a wireless telecommunication facilities located near their home. He stated that Morgan Hill has an opportunity to emulate the City of Gilroy's wireless telecommunication ordinance. He noted that the ordinance exempts low power internet devices and provides clear provisions for the opportunity for companies to co locate their transmitter on transmission towers to avoid lack of services. He encouraged the Council to take a look at the ordinance he drafted for the City of Gilroy as it has worked well in this community. He noted that San Benito County took the City of Gilroy's ordinance and modified it for their purpose.

Steve Britton encouraged the Council to accept the wireless telecommunication ordinance. He stated that he fought the installation of a tower adjacent to his home four years ago and lost. Now, he has a cancer that cannot be explained. His wife also has a cancer tumor and his son suffers from migraine headaches. While he understands that he cannot prove the tower was the cause for his family's problem, his family was relatively healthy prior to its installation. He stated that he will continue his fight to have Santa Clara County accept/adopt the same ordinance as adopted by the City of Gilroy. He does not see a need to place towers close to residential homes when there are other options available. He understands that telecommunication companies want to save money by placing them close to power lines, but that he did not believe that it was worth the cost of human lives.

No further comments were offered.

City Manager Tewes indicated that Mr. Cote's request has been before the Council two previous times: the first time, the Council indicated that it did not want to spend a lot of staff time reviewing it; the second time, the Council referred the matter to the economic development committee after Mr. Cote recommended that the City adopt Gilroy's ordinance. He noted that this committee has been constituted as the Community and Economic Development Committee and that this matter will be placed on their upcoming agenda.

Mayor Kennedy indicated that he would be requesting that this be agendaized for a future Council meeting following a report by the Community and Economic Development Committee.

Council Member Sellers indicated that as chair of the Community and Economic Development Committee, he would make sure that it is on the next agenda.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Vice-chairman Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 1-3 as follows:*

1. **JANUARY 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT..**
Action: **Accepted** and **Filed** Report.
2. **PURCHASE AND SALE OF A BELOW MARKET RATE (BMR) PROPERTY**
Action: 1) **Authorized** the Executive Director to Negotiate, Prepare and Execute the Necessary Documents with World Savings Bank, or its Agent, in an Amount not to Exceed \$210,000; Subject to Review and Approval of Agency Counsel; 2) **Authorized** the Executive Director to Use up to \$10,000 to Complete any Necessary Repairs for the Unit and to Cover any Escrow Closing Cost; and 3) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Prepare and Execute the Agreements Required to Sell the Unit to an Eligible BMR Buyer in an Amount not to Exceed \$220,000 in Accordance with Program Guidelines.
3. **HABITAT FOR HUMANITY – HOUSING PROJECT**
Action: **Approved** in Concept a Grant to Silicon Valley Habitat for Humanity, in an Amount not to exceed \$560,000, for the Construction of a Six-Unit Affordable Ownership Housing Project.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 4-8 as follows:*

4. **JANUARY 2005 CITY FINANCE & INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
5. **TIME ESTABLISHED FOR CITY COUNCIL PUBLIC HEARINGS**
Action: **Amended** City Council Policy, CP-98-02, Relating to the Established Time for City Council Public Hearings to Reflect a 7:00 P.M. Public Hearing Time, Effective April 2005.
6. **APPROVAL OF RESOLUTION PROVIDING JOB TITLES AND COMPENSATION FOR TEMPORARY/SEASONAL JOBS – Resolution No. 5892**
Action: **Adopted** Resolution No. 5892 for Temporary/Seasonal Employees.
7. **SPECIAL CITY COUNCIL CLOSED SESSION MEETING MINUTES OF FEBRUARY 9, 2005**

Action: Approved the Minutes as Written.

8. **SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 9, 2005**

Action: Approved the Minutes as Written.

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: On a motion by Vice-chairman/Mayor Pro Tempore Tate and seconded by Agency/Council Member Sellers, the Agency Board/City Council unanimously (5-0) Approved Consent Calendar Item 9 as follows:

9. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 2, 2005**

Action: Approved the Minutes as Written.

City Council Action

PUBLIC HEARINGS:

10. **APPEAL OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM PROJECT EVALUATIONS – Resolution No. 5893**

Planning Manager Rowe presented the staff report, indicating that the Council is being asked to consider eight appeals of the Planning Commission's evaluation of proposed residential development under the City's residential development control system (Measure C). He indicated that on January 25, the Planning Commission concluded the project evaluation phase of this year's Measure C competition. Under the Measure C ordinance, applicants may appeal the Commission's evaluation of their projects' to the Council, and thus the subject of the Council's hearings this evening. He informed the Council that it may affirm or modify the allotment evaluation after conducting a hearing on the matter. He informed the Council that staff is recommending some point adjustments. He stated that the adjusted scores will be considered in the final project rankings and in the Planning Commission's decision in the award of Measure C building allotments. He stated that the Planning Commission is scheduled to make its final decision on March 1, the deadline imposed under Measure C for the award of building allotments for Fiscal Year 2006-07. He informed the Council that staff grouped multiple project scoring adjustment requests into four areas:

- 1) Ongoing project as listed under the Orderly and Contiguous Category. He indicated that staff is not recommending adjustment of point scores for the Dempsey or the Odishoo projects.
- 2) Providing 2 trees per lot frontage. He indicated that in order to be consistent with prior year's scoring the Council award the additional points to those projects that have committed to providing the two trees per lot (e.g., Odishoo, Dempsey, and the two Delco projects).

- 3) Preservation of significant trees under the Natural & Environmental Category. He said that projects that preserve a greater number of trees, or greater number of trees in proportion to the number of lots that are being proposed, receive the maximum two points. He said that Syncon Homes is preserving one tree and is asking for the maximum points because the tree is old (175-300 years old) and large. He indicated that the criteria does not give allowance to the fact that a tree happens to be an old tree and that this is proportionality question. With respect to the other two projects, they are committed to preserving more than one tree. However, the applications were incomplete as to whether the trees were significant or whether the trees were on the project site. Due to the insufficient information provided to arrive at a determination, staff did not recommend awarding points; noting that the Planning Commission concurred.
- 4) Overall project excellence under the Livable Communications category. He indicated that this is a point the Planning Commission awards based on a determination that a project is superior with respect to the overall layout. He informed the Council that the Planning Commission wanted the opportunity to acknowledge one or more projects that stood out from the others. He stated that in the past, the Planning Commission used different rating factors. This year, the Planning Commission agreed to award two points if a project received a super majority and that a majority vote would receive one point. He indicated that this was a change in methodology. Prior to this year's competition, staff advised the perspective applicants that the Planning Commission would be scoring this category differently. He indicated that it was difficult to achieve a super majority vote because there was a vacancy on the Planning Commission.

Planning Manager Rowe informed the Council that the Planning Commission has formed a Measure C subcommittee to review the evaluation criteria for the subsequent competition. He further addressed the individual project adjustment requests. He referred the Council to the San Pedro-Alcini project. He informed the Council that this project is requesting point adjustments in a couple of additional areas: 1) Schools category relating to a safe walking route to a high school. He indicated that the project is within 1.5 miles from Central High School. He stated that the Planning Commission discussed whether or not Central High School should be included as one of the high schools that the criteria was intended for. He said that it was the consensus of the Planning Commission that because it was a continuation school, with limited enrollment, it should not be counted as one of the School District's high school. However, in staff's review of the evaluation criteria, the criteria does not distinguish between a continuation high school and the School District's comprehensive high school such as Live Oak or Sobrato High Schools. While there is no guarantee that students from this project would be walking to Central High School, staff felt that the project should be given some consideration because a safe walking route exists. Further, there is correspondence from other School District staff higher up in the organization that acknowledges that the School District has three high schools, Central being one of the high schools. Staff recommends that the point score for this project be adjusted. Also, for this project, under the Livable Communities' category, there is one criteria listed that deals with providing a bicycle route or other improvements external to the project for up to two points. The appeal application included some information that was part of the original application that focused on the engineers estimate for offsite public improvements. This dollar figure can apply to four different categories as long as it translates to at least \$1,100 per point per unit. In closer review of the engineer's estimate, public works staff agrees

that the project should be entitled to the full two points. Therefore, staff recommends the additional point as part of the Council's point adjustment.

Mayor Pro Tempore Tate recommended that the Council disclose exparte contacts. He indicated that he had exparte contacts with the following project proponents: San Pedro-Delco, Barrett-Syncon, Diana-Chan in person to person meetings with Ginger-Custom One via phone and with San Pedro-Alcini via e-mail.

Mayor Kennedy stated that he met with the project proponents for Diana-Chan, East Dunne-Dempsey, Barrett-Odishoo, and Barrett-Syncon.

Council Member Sellers disclosed that he met with the project proponents identified by Mayor Kennedy and Mayor Pro Tempore Tate, including Ginger-Custom One in the lobby this afternoon.

Council Member Carr also met with the same project proponents by phone, if not in person.

Council Member Grzan stated that he held one conversation with Council Member Sellers on the Central-Delco project.

Mayor Pro Tempore Tate noted that the criteria does not state that up to two points may be awarded for providing a safe walking route to the high school. He felt that this was an objective standard where a project receives two points or zero points. He noted that staff is recommending that one point be awarded. He inquired whether this was a good precedent to set.

Planning Manager Rowe indicated that Mayor Pro Tempore Tate's point was well taken as far as whether there is discretion to award 1 or 2 points. He noted that it is stated that you can award up to two points. The reason for recommending partial credit is due to the fact that other projects provided off site improvements to establish a safe walking route. This project would not have to install improvements between the two developments. He acknowledged that the criteria did not state up to two points may be awarded and that a safe walking route exists.

Mayor Pro Tempore Tate recommended that the Measure C subcommittee review this issue in terms of distinguishing that a project proponent has to do some work to receive up to two points.

Mayor Kennedy referred to the ongoing project issue, noting that the Dempsey and Odishoo projects believe that they should receive one point for being an on going project. He received information that staff awarded the point and that the planning commission changed the point score under this category.

Planning Manager Rowe stated that the Dempsey and Odishoo projects filed applications after receiving their allocations. Staff reviewed their current status. He noted that the criteria states that a project needs to proceed to an approved development schedule. He acknowledged that there is a development schedule issued with the projects who were awarded allocations in 2003. These projects were not in accordance with this particular schedule and were behind in this regard. He indicated that a formal development schedule is not approved until such time that the project proponent/applicant enters into a development agreement. He noted that neither of the projects has progressed to the point where a

development agreement and development schedule have been approved. The Planning Commission agrees that the two projects are moving forward, but have not gone far enough into the entitlement process to reach the threshold of an ongoing project according to the Measure C criteria. Therefore, the Planning Commission subtracted a point.

Council Member Grzan inquired whether the City differentiates between a heritage tree and a regular tree.

Planning Manager Rowe indicated that the City's significant tree ordinance defines a significant tree as an indigenous tree such as an oak tree. He said that it is the species and the size that determines whether a tree is of significance. It can also include a non indigenous tree such as the Monterey Pine that is very large.

Council Member Carr stated that he has always been confused by how points for overall project excellence are applied. He did not know what factors or standards are used by the Planning Commission to apply this standard.

Planning Manager Rowe indicated that this category is a subjective determination on the part of the Planning Commission with regards to which project stands out from the rest of the projects. He stated that project proponents/applicants are told there are two points that staff nor do the applicants have no control over. The Planning Commission felt that developers were following a recipe and developing the same type of project. He stated that the Planning Commission wanted to apply a criteria that would motivate developers to break out of the mold and design a project that individuals would take notice of.

Mayor Kennedy opened the public hearing.

John Telfer, South Country Realty, indicated that he represents six Measure C applications, three on appeal. He felt that many of the appeals could have been avoided. He felt that Planning Commission and staff have done an excellent job, giving the timeline constraints of issuing allocations by March 1. He said that there was not the usual opportunity to have additional public hearings that were held in the past. He requested that in the 2006 competition, the City start the process earlier in order to allow additional input by applicants to be able to argue and rebut issues that come through the process. He indicated that applicants did not receive the criteria for Measure C until July, at no fault of staff. He said that applicants like to submit for preliminary plan review and have interaction with the Planning Commission in order to be able to tweak projects and have projects better fit the criteria for that given year. He felt that there was a bias against R-2 products versus R-1 projects and that the Measure C criteria has been set up in such a way that it handicaps most R-2 projects. He stated that if you look at the same R-1 and R-2 projects that competed in 2002-03, and compare those to what they competed to this year, the R-1 projects improved their points on average approximately 8.2 points while the R-2 projects improved an average 1.6 points. He did not believe that there was an intent in Measure C to tilt the rules to give further advantage to R-1 projects. He requested that the Council and Planning Commission to take a look at the criteria to see if it needs to be fixed. He felt that one of the criteria that impacts R-2 projects is the landscaping tree issue. He was pleased to see that staff is recommending that 1 point be awarded to R-2 projects that competed this year. Another criteria that needs to be reviewed is the subjective "superior project" category. He distributed site plans for the Odishoo and Dempsey

projects for the 2002-03 and the 2004-05 submittals, noting that they are both almost identical. He noted that in the 2002-03 competition, they received superior project points while they did not receive points in 2004-05.

Warren Enos, one of the property owners for the San Pedro-Delco project, indicated that three property owners recently joined forces with Delco Builders to design a project for property located at the end of San Pedro Avenue. He said that land owners attended the January 18 Planning Commission meeting and that this was the first experience landowners had in becoming involved with city and planning affairs. As observers, he said that the three property owners have concluded that they are not sure that the Measure C allocation process is working effectively. Landowners left with the impression that the Commissioners lost sight of a strategic focus. They saw the process sometimes break down into a measure of micro management. It was also felt that along the way there was a departure from the objective point plan associated with Measure C. This gave rise to bias and a perception of unfairness. He requested that the Council go back and examine some of the outcomes because it was his belief that the Council would see a fair measure of inconsistencies. He recommended that the process be extended so that there would be more input in the decision making process. Further, that the Council review the process in order to eliminate inconsistencies.

Mayor Kennedy said that it was his understanding that staff is working on changes to the process.

Planning Manager Rowe noted that this is the first year in the implementation of Measure C. It was found that some things worked while others did not. He indicated that the Planning Commission has appointed a subcommittee who will begin work tomorrow in the review of the evaluation criteria.

Mayor Kennedy stated that the City will take comments into consideration and try to incorporate as many of those as possible. He encouraged individuals to submit specific suggestions to City staff.

Maureen Upton, representing the Diana-Chan project, appealed the point score under the “superior project” category. She noted that the Planning Commission has scored this project as superior in two prior competitions. While the project continues to have perfect scores in 8 out of 14 categories and nearly perfect scores in other areas, she requested that this project be awarded the superior project 2 points. She stated that this project has competed in the past 4 measure P competitions and has always been just out of the running by 1 or 2 points by ongoing projects that have the advantage in the competition, especially when there are not many allocations available. She said that this project has been improved since the last competition with the following: 1) 2-acre park includes amenities; 2) proposes a daycare/nursery school located adjacent to park; 3) the historic home and yard will be managed by the homeowners association as a meeting and special event area; 4) curvilinear streets, large lots, custom homes, diverse floor plans, production homes, BMR and moderate income homes that add interest to the project, and provides for great diversity in homes. She stated that finishing Bradford Way allows adjacent property owners’ children to walk to Nordstrom School and park in addition to the neighborhood being proposed. The finished path to Live Oak High School will allow children to walk safely from this project and all adjacent projects. The setback along Diana Avenue and the preservation of the vineyard located across the street adds to the landscaping. She informed the Council that the James Court and Murphy Avenue neighbors support this project and are happy with the single story custom homes to be sited behind their project, a change made after hearing their concerns following the

first Measure P submittal. She indicated that this is a big project and that the dollars committed for improvement to Morgan Hill are significant. She felt that this is the kind of infill project Morgan Hill wants.

Planning Manager clarified that in the last competition, this project received a point. This year, the project received a total of two votes and therefore, did not receive any points under the “superior project” rating criteria.

Alexander Hansen, representing Noel Odishoo, applauded the efforts of the Planning Commission. He said that the question on the criteria of an “on going project” is how to score this project compared to all other projects that do not have allocation. Instead, of comparing this project to those projects that do not have any allocations at all, the Planning Commission compared this project to those that were already under construction because they were granted allocations the prior year. He noted that one of the criteria for an ongoing project is that they adhere to a development schedule. He stated that this project received allotments in July 2004. The Planning Commission stated that they would be applying the criteria that states that a project has to have a development agreement or be under construction by September 2004. He acknowledged that the project proponent could not and did not do so, but that the development schedule stated that they had to have various applications, including the application for the development agreement on file by September 1. He noted that this application was submitted by September 1. It was found that this was not enough based on the criteria adopted because it was adopted for other portions of the allotment that received allotments the prior year. He stated that the Odishoo and Dempsey projects were caught because they were part of a supplemental allocation. He argued that because of the differences in time, that treatment was unfair. With regards to the tree, the other aspect to his appeal, he noted that staff agrees with the appeal. He noted that two trees per lot were part of the last Measure P submittal and received the extra point. Two trees were also proposed per lot in this Measure C submittal and did not receive points because staff did not believe that 2 trees per lot could be developed. The Planning Commission concurred with staff’s evaluation and therefore the project did not receive the point. He felt that the project met the criteria

Gary Walton, applicant for the Ginger-Custom One project, stated that there are four points under question. He felt that the staff report included in the Council’s packet was inaccurate. He noted that staff reduced his project points by four points and not the three as stated in the staff report. He stated that staff reduced 1 point under the Orderly & Contiguous category and 3 points under public works. He noted that staff has indicated that the turn around provided in a dead end street does not meet City standard A-21 because the turn around is not located at the end of the street. If you read the standard, he said that it states that it is a minimum of 30 feet from the end of the street. He felt that his project complies with this standard; noting that the turn around is approximately 140 feet from the end of the street. He said that you need to have an area where a fire truck can back out. Staff included a new argument that was not included as part of the planning commission staff report. He indicated that staff has a problem with the word “temporary” because they have no idea when the adjacent property would develop. He stated that the standard does not include a definition for the term “temporary.” He noted that there was at least 1 project that proposed a dead end street that, received a full point, and did not receive a reduction of 3 points. He said that there was at least one Planning Commissioner who did not understand why this project was losing points for following a City standard. He felt that having clear and precise standards are important to the development community. He felt that incorporating personal

opinions and prejudices into the system jeopardizes the whole credibility of Measure C. He felt that he complied with the standards and that staff was not willing to accept this.

Planning Manager Rowe said that when this project was reviewed by public safety staff, they had significant concerns with the dead end street based on the unknown of when the street may eventually connect through and provide a second access. While the proposed hammerhead is designed according to standard detail A-21, it is not positioned at the end of the street, but midway along the street. The issue with public safety staff is that there may be a vehicle in the driveway of the residence that may eliminate part of the hammerhead movement. He noted that the dead end would not accommodate a fire apparatus and does not facilitate police patrol.

Cray Miutl addressed two issues relating to the Barrett-Syncon Homes project. He felt that the oak tree is a significant element to Morgan Hill and that there is a certain aesthetics quality to a large oak tree. It is also felt that the oak tree should receive 2 points from a proportionality stand point. He said that he was able to find a 17-year old study on Live Oaks and California Oaks sponsored by the University of California at Berkeley and the California Department of Forestry/Fire Protection. He said that the study studied California Oaks in three counties. He reviewed the methodology applied in the study and calculated the volume of the tree and summarized his findings. He noted that his tree is almost 13 times the size of the volume of a 21 inch tree and therefore is considered significant. Based on this calculation, this project is saving 13 trees as opposed to 1 tree that is 21 inch in diameter based on the size of this particular tree. Based on proportionality, the project should receive more points because it is a larger tree. While he felt that the Planning Commission and staff did an excellent job in its review of the project, he felt that the results were skewed. Unfortunately, the death of Planning Commissioner Engels biased the project. He felt that this project was unfairly penalized in this particular instance. In this case, had Commissioner Engels been alive, the project could have received this point. He requested 2 points be awarded to this project for being a superior project.

No further comments being offered, the public hearing was closed.

Mayor Kennedy referred to the Syncon project, noting that the site has a historical oak tree. He inquired as to the process in point scoring on this project as it does not appear that the significant oak tree received any specific points.

Planning Manager Rowe said that the way the criteria is written, it states that “each building site preserves significant trees as defined by the ordinance. The number of trees preserved must be proportional to the project size and the number of existing trees.” He said that if a project does not preserve trees and it is possible to preserve the trees, a project loses points. If there are no trees on the site, a project does not receive any points. If a project has trees and preserves them, the project can receive up to 2 points. He informed the Council that the issue of proportionality was applied. He noted that there were projects in the competition that preserved a greater number of significant trees and proposed fewer lots that received the maximum 2 points. This project is preserving a single large old tree in a 52-lot project, compared to other projects that have more trees with fewer lots. He informed the City Council that the Planning Commission will be reviewing this criteria and try to define it better.

Council Member Sellers noted that the criteria referred to by staff does not dictate that it be 1 point for 1 tree, or 2 points for 2 trees, but that staff referred to a proportionality of trees to the site. In listening to the argument, he felt that it was more quantifiable. He felt that the City has the latitude to award additional points if it is determined that the tree is of significance.

Mayor Kennedy recommended that the Council review each of the four multiple project scoring adjustment paragraphs, walking through each and reach consensus, item by item.

Points for On-Going Projects

Planning Manager Rowe said that this item applies to two projects: Barrett-Odishoo and East Dunne-Dempsey projects. Their positions are that they received their allotments late and do not believe that they should be penalized for the fact that they are not on schedule. Staff does not believe that the criteria makes accommodations for late allocations. While the Odishoo application did file applications for subdivision, site review and development agreements in September, the applications were deemed incomplete at that time and remain incomplete for processing. Staff reports no progress on this project since September. The Dempsey project proponents continue to process their applications.

Mayor Pro Tempore Tate felt that the City would have defined a project that received allocations as a continuing project, noting that the Council did not define it as such. The Council defined a continuing project as a project that has made progress. Therefore, he felt that this is a clear definition.

Planning Manager Rowe informed the Council that when the City makes an award of allocation, project proponents who receive allocations are sent a letter informing them of their application filing schedule. He said that September 30 is the cut off point that the Planning Commission uses and reviews all submittals to that point. He said that the Odishoo and Dempsey projects were awarded allocations well after the September 30 date; being awarded allocations the following April. Therefore, these two projects were already behind schedule out of the gate. The City refines the schedule when a development agreement is entered into, and that a project would follow this schedule thereafter. He said that the City is processing a development agreement application for the Dempsey project, but that it has not been approved by the Council. Therefore, a development schedule has yet to be approved for this project. He felt that it was premature to make a determination as to whether these projects are in compliance as the applications are incomplete for processing, and that there has been no response to staff's letter requesting that they complete their applications in order to move forward with the projects.

Mayor Kennedy felt that the goal of awarding allocations to ongoing projects is to help them get completed. He felt that this appears to be a technical reason for denying the points. By not awarding these points, he felt that these two projects risk falling into the same problem experienced in the past with other projects.

Planning Manager Rowe said that once these projects complete the application process and get the development schedules in place, they would be in compliance. Therefore, in subsequent competitions, the two projects would be eligible for points. He concurred with Mayor Kennedy that the criteria was intended to allow these projects to eventually be completed, but that it is also to reward them for moving with due diligence and keeping projects on track. In one case, staff questions whether it is appropriate to

consider a project as ongoing because the applications are incomplete. In the other case, the Planning Commission believes that it was too early to reward the project with additional allocations. The Planning Commission did acknowledge that the projects received late supplemental allocations, but that staff advised the applicants' representatives prior to the competition that staff would not be treating them as ongoing projects.

Council Member Carr felt that this was a unique scenario that was established by actions taken by the Council, awarding additional allocations; assuming the passage of Measure C. Measure C did afford the opportunity to have additional allocations. The Council further stipulated that the allocations would go to these two projects. Therefore, the timeline is different for these two projects as a result of this action. He stated that he was struggling with holding the projects to a timeline and criteria that was established, resulting in the projects not fitting because of action taken by the Council.

Mayor Pro Tempore Tate did not agree that this is the only instance where this situation could occur. He said that there is a potential for a project to fall behind schedule and that additional supplemental allocations could be awarded from defaulted allocations. He did not believe that an ongoing project is ongoing until they start; noting that these projects have not started. He indicated that these two projects would be ongoing projects as soon as they start and would be eligible for the extra points in future competitions to keep them on track and ongoing. He did not believe that the definition for an ongoing project is a project that has been allocated, but a project that is moving forward with the development agreement schedule. He stated his support of the definition that a project is not considered ongoing until the project has moved forward.

Mayor Kennedy noted that it is staff's recommendation that the Council affirm the Planning Commission's scoring of these two projects which would not include additional points. He inquired whether any council members disagreed with this recommendation.

Council Members Carr and Sellers and Mayor Kennedy stated that they disagreed with the Planning Commission's recommendation.

Council Member Sellers agreed that the Council should stay with the intent of the goal and not get too technical.

Council Member Grzan noted that the intent of the process was to develop a quantifiable scoring process that allocated points to move projects up, according to the points, into a process. He stated that he would have a problem allowing for subjectivity to enter into the evaluation process. Should this occur, the Council would create an opening through the entire process. He felt that this may be harmful, in the overall affect, if you allow for subjectivity here; the Council would need to allow for subjectivity in other categories, deteriorating the process. He noted that it is being recommended that the Council hold the line in this area. If not held, he did not know how the line should be held. He recommended that the Council follow the guidelines.

Mayor Kennedy stated that it was his belief that it is the Council's role to look at things from a higher level and not get into the minutia, although it may be a more subjective action on the part of the Council. When an appeal is made, the Council is in the role of a judge and needs to look at the law, the facts and

try to avoid splitting a project. He felt that the Council needs to look at the bigger picture. Thus, his support for awarding the additional point to the two projects. He recommended that the Council take a vote on each of the four issues separately.

Action: *Council Member Sellers made a motion, seconded by Council Member Carr, to **award** one additional point to the Odishoo and Dempsey projects.*

Council Member Grzan stated that he would support the motion, but requested that the Council be cautious on how it proceeds because it is the intent to have a point driven system and to have integrity within the process. He recommended that the Council be as objective as possible in the scoring, criteria, and the rules that it sets so that everyone understands that they are all in a level playing field.

Mayor Kennedy noted that Council Member Carr pointed out that this situation is a one time situation as a result of an action taken by the Council.

Council Member Carr felt that this situation is occurring because of a scenario established by the Council. He was not stating that this situation could not happen again in the future such as when a project drops out in their allocations. He felt that the Council will know how to better handle the situation in the future. He felt that this situation was set up by the Council's action taken last year and felt that the Council should follow through with its action.

Council Member Grzan noted that the City has a point scoring system where a superior vote can achieve two additional points. He said that the Council will have all kinds of extenuating circumstances in a number of different areas. Should the Council grant this point, the Council is stating that it would vary from its decision making process based upon extraordinary/extraneous situation.

Vote: *The motion carried 4-1 with Mayor Pro Tempore Tate voting no.*

Points for Providing Two Trees Per Residential Lot

Planning Manager Rowe recommended that one additional point be awarded to the Odishoo, Dempsey and the two Delco projects for the commitment.

Council Member Sellers noted that staff recommended action states that "Staff will advise perspective applicants that staff will only award the 2 points to projects that provide standard 60-foot wide lots." He felt that staff was stating that because of the ambiguity this year, staff would allow the additional point. However, staff would be clearer in subsequent years on how the two points were to be achieved. He inquired how this section would be interpreted for R-2 projects.

Planning Manager Rowe noted that Mr. Telfer was suggesting that this is an example where an evaluation criteria favors an R-1 project over an R-2 project. He said that the City could look at alternative ways for all R-2 projects to earn the same points. Should the Council concur with this alternative, the Planning Commission subcommittee could consider this.

Action: *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Tate, to **award** an additional point to the following projects: Odishoo, Dempsey, and the two Delco projects. Further that the Planning Commission look at alternative ways for R-2 projects to earn similar points.*

Council Member Carr stated his support of the motion, but expressed concern that the 60 foot wide lot reference is rigid. As the Measure C subcommittee looks at changes for subsequent competitions, it was his hope that they return to the Council with an ability to have flexibility for R-2 projects and the ability to do creative things within these projects.

Vote: *The motion carried 5-0.*

Preserving Significant Trees

Planning Manager Rowe said that staff noted that the two Delco and the San Pedro-Alcini projects committed in their narratives to preserve all trees on site. However, the applications did not indicate whether the trees were significant. Although the Delco project referenced a tree in the adjoining project that was previously preserved, it does not apply to this project. Therefore, there was insufficient information in the application for staff to make a determination, and that site visits were not able to resolve the question. He noted that there has been discussion about the Syncon Homes having one large tree where the project proponent is requesting two additional points. He clarified that there is a proportionality that is used based on the number of trees versus the number of lots. The applicant is arguing that using the mass of the tree is proportional to other typically sized trees, and therefore believes that he meets the proportionality test.

Council Member Grzan noted that there is nothing contained in the criteria that allows for additional points for a significant tree.

Council Member Sellers felt that the criteria talks about the significance of a tree. Further, that the Planning Commission and staff used a proportionality test as a guideline. He felt that the City is better off preserving a large significant oak tree versus a couple of pine trees.

Mayor Pro Tempore Tate felt that the criterion contains two statements: 1) how many trees according to lots, and 2) how many trees according to the number of trees. The criteria applies to 100% of the significant trees.

Planning Manager Rowe felt that the more trees on a piece of land the more accommodations you have to make in the site plan to preserve the trees. Projects are awarded for this effort. He noted that the Syncon Homes' project received 1 point.

Mayor Kennedy felt that there were two issues associated with the Central-Delco and Alcini projects. He noted that staff is recommending that the Council affirm the Planning Commission's score of zero.

Action: *It was the consensus of the City Council to **support** staff's recommended action with regards to the Delco and Alcini projects.*

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to **award** an additional point to Syncon Homes. Further, that the Planning Commission give clarification as to the proportionality issue with the understanding that if a project has a large beautiful significant tree that they be accommodated with more specificity.*

Mayor Pro Tempore Tate noted that Syncon Homes is only preserving one tree for the number of lots being proposed. He said that there is not a significant amount of effort per lot to preserve several trees. He felt that this is one criteria that you need to have the opportunity to meet; noting that this criteria has always been in place.

Council Member Carr stated that this criteria is similar to “distance from the core” as an opportunity point for some properties. He said that this is a difficult issue to struggle with. He acknowledged that the tree should be preserved. He noted that the criteria states that the number of trees preserved for a project must be proportional to project size. He felt that this is a criteria that needs work for future competition. He wanted to make sure that the criteria is applied fairly and evenly to all projects.

Mayor Kennedy said that if he does not support the additional point, it is as though he does not support preserving a 300 years old, 30 foot diameter oak tree.

Vote: *The motion carried 3-2 as follows: Ayes: Grzan, Kennedy, Sellers; Noes: Carr, Tate.*

Overall Project Excellence

Planning Manager Rowe said that this is up to a 2 point category that the Planning Commission awards for a superior project: 1 point is awarded based on a majority vote, and 2 points is awarded based on a super majority vote of the Commission. With respect to the issue of the vacant Commission seat, he indicated that there was a situation a year ago where a Commissioner had to abstain. This resulted in the same voting membership in both years of competition. There was also a significant change in the way to which points were determined this year compared to last year.

Mayor Pro Tempore Tate said that he understood the explanation that the City changed the criteria and that there were a lot of appeals based on the fact that projects were superior last year and were not considered superior this year. He stated that he was not comfortable with the number of votes as being the determining factor of a superior project rating. This may be something that the Council would like the Commission to review in terms of how points are awarded. This would result in changing the criteria again and may result in projects endangering themselves to having an inconsistent score between this competition and the next competition. He would like the City to get to the point where it is consistent criteria to criteria; and year to year.

Mayor Kennedy stated his concurrence with Mayor Pro Tempore Tate on this point. He felt that this is an area that the Council is relying on the Planning Commission; giving them the leeway to award these points. He stated that he would like to have the Planning Commission retain the leeway to make the decision and not interfere with the process on this particular issue. He noted that the Planning

Commission has made some changes and that it was his understanding that they would continue with this same criteria for this particular category.

Council Member Carr inquired whether a project was competing against other projects or is a project competing against itself under the overall project excellence category.

Planning Manager Rowe responded that a project is competing against itself and can receive up to 2 points. In order to be fair, the Planning Commission needs to look at all projects to determine why they are awarding 1-2 points.

Council Member Carr said that assuming a project is competing against itself; he did not understand why a project drops in its superior status from one competition to the next.

Planning Manager Rowe said that a Planning Commission appointed a subcommittee who reviewed the scoring process. The subcommittee found areas in need of changes. He stated that the Planning Commission, as a whole, did not instruct the subcommittee to look at changes to the project excellence area. Therefore, the scoring criteria will remain the same for the next competition unless there is input from the Council this evening to do so. He indicated that Commissioner Engels voted a year ago and Commissioner Escobar had to abstain last year. He noted that Commissioner Escobar scored the projects this year and there was a vacancy on the Planning Commission. Therefore, there was a slight difference in the make up of the voting membership. There was also a change in the methodology by the Planning Commission as they used five different rating factors to determine which project(s) should be rated superior. This year, the Commission felt that it was too complicated. If was decided that each Commissioner would review each of the 24 projects, identifying which they believed were superior.

Planning Commissioner Ralph Lyle commented on the scoring conducted under this category last time. He said that the Planning Commission set up a list of items that each should look at in scoring a project for excellence. A weight was applied to it, resulting in an overall number. Each Commissioner would come up with a number for each project. In this process, there were no projects graded as being superior on a standard grading scale. The project received superior points because they happened to be the highest score across the competition. Overall, there was a lot of confusion and indicated that some Commissioners did not understand the weight. Therefore, there was a wide disparity in scores. When you averaged the score, it was not clear how it was working. The subcommittee decided that a simpler process was needed. It was decided to look at each project to determine whether it was considered to be a superior project. This year, there was a preponderance of Commissioners who believed that a project was superior. He indicated that this year's process was scored different from last year. For future years, he recommended the criteria be relatively consistent.

Planning Commissioner Joe Mueller said that this was a technically complicated scoring process last year. He felt that projects were scored as each project was reviewed and not relatively to the other projects. He stated that projects may not be the same from year to year. It may be that minor changes may affect the way the Commission viewed the project. If a project does not change from one year to the next, it was his belief that the point raised by Council Member Carr comes into play. He agreed that this category is meant to be a subjective scoring by the Planning Commission because it was felt that all projects were becoming "cookie cutter" projects with everyone doing the same thing. He did not believe

that this is what the City wants; it wants creativity and unique neighborhoods in the community. It was his belief that the scoring was becoming too objective and that the City was not seeing creative projects; thus, the need for the subjective score.

Council Member Grzan noted that one of the issues raised was that the make up of the Planning Commission shifted. Therefore, the make up of the voting can change based upon a project.

Mayor Kennedy noted that the recommended action is no scoring adjustments to be made for the overall project excellence category.

Council Member Sellers recommended that this be divided into two different parts. He noted that the Odishoo and Syncon projects believe that they should have received additional points. He expressed concern that developers were caught in the ambiguity of changing how you receive points under the project excellence category. He stated that he understood that it was a different criteria, but felt that this was a subjective process. He said that it is hard for him to understand how a project can be scored superior one year and not the next year. He felt that the Planning Commission is trying to apply an objective application to a subjective criteria. He did not believe that this was the best way to allow for creativity and recommended that additional thought be given on how to best do this. He agreed that projects are becoming cookie cutter projects. He was not sure whether given additional subjectivity to the process would be addressing this concern and may be undermining some of the other things the Council is trying to achieve. He felt that the City has been fortunate to have a stable, consistent Planning Commission. However, he did not believe that this would always be the case. For consistency sake, he stated that he was leaning toward giving the points to those projects that received them before, but not to the other projects. He felt that projects receiving superior points last year were caught in an ambiguous area where they had a criteria in one year and a different one the next. Further, that developers came in with expectations. He felt that the integrity of the process dictates that the City be consistent in the scoring process.

Mayor Pro Tempore Tate felt that an argument could be made that if a project was not in the previous competition, they could have received a superior score. He felt that Council Member Sellers may be opening up a situation.

Planning Manager Rowe indicated that project proponents were advised prior to the competition that projects would be scored subjectively under this category going into the process.

Council Member Carr appreciated the goal of what this category was trying to achieve (e.g., uniqueness in character). He indicated that he struggled with this category as well last year. He did not believe that the City has a way to apply this category and did not know if it is meeting the goals of the Council or that of the community. He agreed that a project that was scored superior one year should be scored superior the following year unless there were changes made that degrades the project. He would support granting 2 points to the two projects who received them last year. He did not believe that a project is to be scored against another project under this criteria.

Council Member Grzan said that there may be a new criteria applied next year with new constraints/opportunities for projects. He felt that a project needs to return and prove that it is still a

superior one. If a developer wants to submit the same project the following competition, the project is not guaranteed the same points or the same rating.

Council Member Carr felt that if a project scores well in any other category in Measure C, it would be the idea to make sure that the project remains the same in the next competition so that a project is scored the same. Further, to update a project based on modified criteria. Under this category, the City/developer would be looking at the Planning Commission and be forced to dramatically change a project. He was not sure that this is what this category is supposed to do.

Council Member Grzan said that this Council could change as well. He said that the Council has the opportunity to make changes and that the changes are not guaranteed in following years. He stated that what one council does is not binding to the next Council unless defined by law.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Mayor Kennedy, to **make no scoring adjustments** under this category. The motion carried 3-2 as follows: Grzan, Kennedy, Tate; Noes: Carr, Sellers.*

Individual Point Adjustment Requests

Planning Manager Rowe indicated that staff recommends an additional point for the San Pedro-Alcini project for being within the prescribed walking distance to Central High School and one additional point for the bicycle route improvement path based on the clarification of the engineer's estimate (1 additional point under the Schools and 1 additional point under Liveable Communities categories).

Mayor Pro Tempore Tate expressed concern that a precedent would be set because you can receive up to two points and it is being recommended that 1 point be awarded. He did not believe that the criteria stipulates that a project has to construct a safe walking route. The criteria states that 2 points are awarded if the safe walking route is in place. Should the Council decide that Central High School qualifies as a high school, he felt that 2 points needs to be awarded. He agreed with staff's recommendation that the subcommittee look at this criteria and be able to give up to 2 points. However, he did not believe that the criteria reads as such at this time.

Council Member Sellers concurred with Mayor Pro Tempore Tate's recommendation of awarding 2 points for a safe walking route to Central High School for the San Pedro-Alcini Project. However, he would like to address the turn around issue raised by Mr. Walton.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to **award 2 additional points** to the Alcini project for providing a safe walking route to Central High School.*

Planning Manager Rowe informed the Council that the Planning Commission felt that a continuation school, unlike comprehensive schools, does not have an open enrollment. Therefore, there is no guarantee that high school age students from the project would walk to Central High School.

Council Member Carr stated that he agreed with the Planning Commission's position with respect to this issue. However, he inquired whether the City could consider the uncertainty of high school age students attending Central High School. He did not believe that the safe walking route affects Central High School or other schools, and did not know whether he could take this under consideration.

Planning Manager Rowe indicated that the School District and the Planning Commission only looked at the two comprehensive high schools in the application of a safe walking route category. He informed the Council that the applicant provided correspondence from other district staff who considers Central High School as a high school, although a different type of a high school. When staff looked more closely at the evaluation criteria, it was noted that there was no distinction between the comprehensive high school and the continuation high school. Therefore, it is staff's belief that the benefit should go to the applicant. He indicated that the Planning Commission subcommittee will be looking at this category. This is a two point item, not an up to 2 points.

Council Member Grzan felt that a safe walking route assumes that it is a neighborhood school. He did not believe that Central High School was a neighborhood school, per se. He did not know why the project is offering to install a neighborhood access point as there is not a neighborhood that needs it.

Planning Manager Rowe indicated that the Planning Commission did not award points based on the fact that a neighborhood access to Central High School was needed. He concurred that this is not stated in the criteria. He clarified that the Planning Commission did not award any points under this category while staff is recommending 1 point be awarded.

Vote: *The motion to award 2 additional points for a safe walking to school route carried 3-2 as follows: Ayes: Kennedy, Sellers, Tate; Noes: Carr, Grzan.*

Planning Manager Rowe recommended that an additional point be awarded to the San Pedro-Alcini project for a maximum of 2 points based on the value for the offsite public improvements for the bicycle route proposed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **awarded** 1 additional point, for a maximum 2 points based on the value for the offsite public improvements for the bicycle route proposed to the San Pedro-Alcini project.*

Planning Manager Rowe indicated that the Custom One project proposes to extend Ginger Way and Rose Lane and would result in a dead end road. He indicated that a hammerhead (3 point) turnout is proposed. He addressed the difficulty of using a driveway for a turn around access. He indicated that it is a long driveway to the garage located to the rear and that several vehicles could park in the driveway. If there is a car parked in the driveway, it would not be possible for the driveway to be used as a turnaround area. City details recommend that hammerheads be located within 30 feet of the end of the street. He stated that the location of the driveway apron does not meet the 30 feet minimum requirement. Public Works staff indicates that the improvements being proposed for the extension of Rose Lane is only a two-third street width. This results in a narrower street to try and negotiate a turn around. Therefore, it is felt that this design discourages access to some units. He said that turnarounds are

acceptable for temporary situations. However, he indicated that the California Salvage located to the south can continue for an indefinite period of time. Therefore, it may be a long time before the road continues through and provide a completed access to the neighbourhood.

Council Member Sellers noted that the Salvage yard property is zoned for residential use and felt that it could be conceivable that it develops in the near future. He said that the issue is “intent” and did not believe that the City could surmise the intent for future development.

Planning Manager Rowe indicated that the standards state that driveway approaches may be used as part of a temporary hammerhead, provided that they meet the dimensions for the template of the design. He said that the standard was envisioned as a temporary solution. He indicated that the template for this project states that the minimum width would need to be 20 feet. This project would provide 24-32 feet. Therefore, the project would have more than the minimum width along a section of the roadway to meet the template for the temporary hammerhead turnaround. He stated that the street proposed is considered a standard half street. He noted that some of the properties in the area are developed and that in order to be constructed as full street standards, it may require the City to acquire the right of way or through a commitment of a project who would agree to install the improvements.

Mayor Pro Tempore Tate indicated that a determination that the turnaround did not meet standard A-21 was based on the proposed location; noting that there is a minimum of 30 feet from the end of the street. He noted that a maximum is not indicated on the standard. He felt that the project proponent has a technical argument. He stated that he understands the public safety concern, but did not believe that the standard was violated. He said that the standard does not state that the hammerhead/turnaround has to be located at the end of the street.

Council Member Sellers suggested that it be requested that a “no parking” sign be placed in the driveway for further safety. He agreed that the criteria is straight forward, and felt that there were areas where you can increase safety and address the issue.

Council Member Carr stated that he was struggling as to where the design technically violated the standard.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **determined** that the hammerhead turnaround does not violate the standard and meets the standard requirements for design and construction; **awarded** 3 points under this category and 1 point under orderly and contiguous category for a total of 4 additional points. Further, requested that the applicant address the public safety issue by taking appropriate measures to adjust the design.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **concurred** with staff recommendation on the remaining items.*

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to adopt amended Resolution No. 5893, amending sections 1-8 based on the consensus votes taken this evening. Staff to revise the Resolution accordingly.*

Council Member Sellers felt that the City Council is well over due for a joint meeting with the Planning Commission. He felt that this may be an issue that the Council can use to have the joint meeting. He said that he was struck by the comments as expressed by Mr. Enos. He expressed concern that the City may be getting too enamoured with the process and have lost some focus on what the City is trying to do. He felt that this is an outstanding community, largely because of the RDCS process. However, he was starting to feel more anxious about the process. He was pleased to hear that the Planning Commission would be convening a subcommittee who would be reviewing the standards and criteria. He felt that the Council should give the criteria broader discussion. He requested that the Council consider having a joint meeting with the Planning Commission, taking a higher view to make sure that the City is on the right track.

Mayor Pro Tempore Tate agreed with the comments expressed by Council Member Sellers. However, he felt that the City boxed itself in with a 16 month timeframe. He recommended that the Council look at backing off and figure out the appropriate timing.

Council Member Carr said that it has always been easy to state that the problems will be corrected with the next competition and have the subcommittee look at the problem areas. He did not believe that this would be easy to do with the change of two year competitions. He felt that the Council needs to solve the problems as they arise; looking at the RDCS competitions before they take place. He did not believe that the Council could wait for the subcommittee and a competition two years down the road to solve a problem(s) that exists today.

Council Member Grzan agreed with Council Member Sellers that the RDCS process is starting to become problematic in some respects. He felt that the point system is driving the process. He noted that the Council voted on certain items this evening because the criteria does not allow the Council to take a different action. He recommended that the Council step back and become value driven in the decision making process. Hopefully, this will give the Council flexibility, and yet keep the City on track to build the things needed.

Mayor Kennedy noted that this is a voter initiative and that there were reasons why the voters decided to include restraints on what the Council can and cannot do. As much as the Council needs to try and make Measure C work as best it can, he noted that it is an initiative.

Vote: *The motion carried unanimously (5-0).*

Redevelopment Agency Action

OTHER BUSINESS:

11. CASA DIANA MIXED-USE HOUSING PROJECT PREDEVELOPMENT LOAN

Bill Newkirk presented the staff report on the Casa Diana mixed use transit oriented project on a 2.8 acre site located between Dunne and Diana Avenues, along Railroad Avenue. The project is proposed at a density of approximately 28-units per acre. He indicated that 80 units and 3,500 square feet of commercial use are proposed for the site. He stated that the proposed project is part of a PUD that encompasses the entire block. He informed the Agency Board that EAH is requesting a \$50,000 predevelopment loan to reimburse it for a purchase deposit that has been released and is no longer refundable. He stated that staff is recommending Agency approval of the loan with a couple of provisions: 1) EAH to master plan the entire PUD site; 2) address concerns about design cohesion for the area next to the courthouse; 3) look at commercial uses that support the courthouse and the downtown and do not conflict with the downtown; 4) incorporate the existing businesses into the PUD design; and 5) an assignment right to the Agency so that the Agency can conclude the purchase and forgive the deposit to EAH in the event that they cannot finish the project. He informed the Agency Board that this is a complex project and that there are a number of items that have to be resolved. He said that the various income models provided by EAH have given the City a range of Agency assistance from \$3-\$7.5 million. He stated that staff is recommending Agency approval of the predevelopment loan at this time with the conditions identified in order to continue working on the project.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Agency Member Sellers stated that he was anxious about having additional retail in this area. He said that by necessity, it would be courthouse serving. He felt that there may be retail opportunities within the courthouse facility itself. He was anxious that retail in this area would draw from the downtown. While the City needs low and very low income housing units, he felt that they have been disproportionately provided in this neighborhood. He stated that he would be more inclined to support a project that proposes moderate units and encompasses more of the community; a proportion that has not been met. He does not know whether retail is needed in this area. He stated that he would agree to approve the loan this evening because there was still a long way to go. He felt that it was vital for the Agency Board to define the uses so that staff knows what direction to take.

Chairman Kennedy said that some concerns have been raised about focusing all of the City's affordable housing in the downtown area and the need for mixed housing in the downtown. He recommended that mixed housing be looked at as part of this project; focusing on balancing the housing types for purchase as well as rental.

Mr. Newkirk indicated that the project is being proposed as an all rental housing project. He said that the plans are conceptual at this time and that there may be ways to break up the housing mix.

Mayor Kennedy stated that it would be his preference to make part of the project a purchase type of a project as a sense of ownership brings responsibility.

Executive Director Tewes indicated that the project sponsor may not have the same objectives as being articulated by the Agency Board. If for any reason the project cannot proceed, the City wants the ability to step in and move forward. He noted that EAH is a non profit housing organization that is established for certain purposes and that their purposes are as important to them as the City's downtown plan is to the City. He felt that the City needs to find a match.

Agency Member Carr was pleased to see that staff's recommendation includes the integration of existing businesses such as Mama Mias because the City does not want to do anything to damage what exists today.

Agency Member Grzan noted that the City is leaning toward low income or below market rate housing along the railroad tracks. He felt that mixed use of moderate housing rental units would be appropriate.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Concept for the Development of Casa Diana, a Transit-Oriented, Mixed-Use Housing-Commercial Project, incorporating Agency Members' comments.*

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute, and Implement a Predevelopment Loan Agreement in the Amount of \$50,000 with EAH, Inc.; Subject to Review and Approval of Agency Counsel.*

12. PUBLIC ART AT THE MORGAN HILL TRAIN STATION

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the project before the Agency would commit \$50,000 in MTC grant funds for the Depot Street project to the Arts and Cultural Alliance (ACA) of Morgan Hill to create a bronze sculpture of Hiram Morgan Hill, his wife and daughter at the train depot. He informed the Agency Board that the total estimated cost is \$102,000 plus site preparation costs. He indicated that ACA is requesting that the City commit the MTC funds toward this project. Once the project is completed, that the City accept and maintain the statue, allowing placement of this art work at the train station, and that the City commit and advance \$52,000 plus the site preparation costs for the statue. He stated that the ACA will commit to fundraise these costs. However, in the event that they are unable to fundraise the \$52,000 plus site preparation costs, they are requesting that the City cover these costs; the City's contribution toward public art. Staff is recommending that the City agree to commit the \$50,000 MTC funds subject to ACA being able to fundraise the \$52,000 plus site preparation costs. Staff would allow a 12 month period for ACA to fundraise.

Chairman Kennedy recommended that the model sculpture be displayed at City Hall and at the Community & Cultural Center.

Chairman Kennedy opened the floor public comment.

Zoe Gustlin, Morgan Hill Community Foundation, informed the Council that she is the chair of the ACA at this time. She said that there was a long list of projects, but that it was felt that this sculpture was the best one to pick to start with for public art in Morgan Hill. She indicated that the art work would be a large structure and would have a huge presence in the town. The sculpture would bring a lot of benefit to the community, in its totality, as well as being a nice piece of art as rendered by the artist. The art will be

life size, made from bronze, will be a substantial piece of art, and will be placed at the train depot. As Depot Street improvements are made, it is felt that the sculpture will be a focal point of the improvements. She requested that the Agency approve the \$50,000 MTC grant as well as a \$52,000 loan in order to be able to complete and unveil the sculpture by the centennial. She informed the Council that ACA would be spending a lot of time fundraising to repay the \$52,000, if possible. There are plans to approach various groups to raise money as well as contacting businesses for donations. ACA will also be contacting Morgan Hill pioneer families to see if they would contribute funds in the name of their families toward the statute. She introduced Marlene Amerian, a local artist who has designed the sculpture, indicating that Ms. Amerian has given the ACA a great price for the art work.

Marlene Amerian addressed the Hiram Morgan Hill family sculpture model, indicating that the model represents approximately six weeks of work. She said that the sculpture will take 14 months of her time to complete. If approved this evening, she would start working on the sculpture right of way so that the art sculpture can be unveiled for the City's centennial. She informed the Agency Board that she would be donating her time to this project. The funding being requested is for out of pocket expenses to construct the art work. She agreed to donate the art work to the City if it is willing to accept it.

Harlan Warthen felt that the City is well on its way to becoming a real city as it will be entertaining public art. He noted that there is not a lot of art in Morgan Hill and the art that is here, does not reflect Morgan Hill's heritage. He encouraged the City to approve the art work of the family who started Morgan Hill as the City is getting a good deal on the art work.

No further comments were offered.

Chairman Kennedy stated that Guadalajara, Mexico has beautiful public art in its main plaza. He noted that this art piece is proposed to be placed in a main corridor, crossing the railroad tracks that connect to the courthouse and the downtown area. It was his hope that the art piece would be prominent in its location and would be a centerpiece along the walkway.

Agency Member Sellers agreed with Mr. Warthan in that the City has a beautiful piece of art work donated by the Garcia Family depicting El Toro as it appeared 150 years ago, and that this piece of art hangs in the City's Community & Cultural Center. He noted that the City does not have many opportunities for art that depicts Morgan Hill's history. He felt that it would be incumbent upon the City to perform the changes to Third Street that will make the location an explanod area. He recommended that the art work be tied into the area as it would be an incredible addition.

Action: *Agency Member Sellers made a motion, seconded by Agency Member Grzan, to **Commit** \$50,000 in Metropolitan Transportation Commission (MTC) "Transportation for Livable Communities" (TLC) Grant Funds to the Arts and Cultural Alliance of Morgan Hill (ACA) for a Bronze Sculpture Entitled "Waiting for the Train"; Contingent Upon the ACA Raising Matching Funds, in the Amount of \$52,000 Plus Site Preparation Costs, by March 1, 2006.*

Vice-chairman Tate inquired what would happen should the Foundation/ACA be unable to raise funds. He noted that staff's recommendation is such that the City would not provide funding if the ACA is

unable to raise all the money.

Chairman Kennedy indicated that he would help the ACA raise funds. He noted that the ACA is requesting a loan.

Agency Member Carr noted that the staff recommended action is not to provide the \$52,000 loan that the ACA is requesting.

Executive Director Tewes noted that other individuals have approached the City with great ideas, noting that the Council/Agency Board has not reviewed the other items in the budget that will be reduced in order to make room for some of the funding requests. He recommended that the Council approve the \$50,000 from the MTC grant that would be applied for this specific type of program. Further, the Council/Agency Board direct staff to include options for funding subsequent loans in the budget analysis.

Chairman Kennedy felt that the Agency should proceed with the loan as well this evening to provide ACA some assuery.

Agency Member Sellers said that he would only support the loan if additional reporting periods were included.

Chairman Kennedy recommended every six month interval reporting periods.

Agency Member Sellers indicated that the Agency Board could commit \$50,000 in MTC funding and that \$52,000 be incorporated into the budget process to be finalized by the end of June 2005. He inquired whether this recommended action would create a problem for ACA.

Representatives from ACA indicated that the recommended action would not pose a problem.

Agency Member Carr stated that this is an action that everyone wants to support. However, he would like to give staff the opportunity to go back and consider where the \$52,000 would come from in the tight budget if this amount cannot wait to go through the budget process. The Council could have the discussion about the funding source when staff returns with its recommendation. He noted that it was not too many meetings ago where the Council dished out the rest of the unallocated budget for these kinds of things. The Council knows that it would be having more of these kinds of request, noting that the Council has yet to fund IDI and other projects that will be coming before the Council/Agency Board. Before the City launches into another \$52,000 funding approval, he felt that Council/Agency Board needs to identify the funding source. He recommended that staff return with suggestions of funding sources before the money is spent. He acknowledges that the request is as a loan, but noted that funding is being requested upfront.

Chairman Kennedy stated his support of loaning the \$52,000 from the City's general fund reserves. It was his belief that raising \$52,000 is achievable and stated that he would be committed to assist with locating sponsorship and support in a variety of ways to help raise the funds.

Action: *Agency Members Sellers made a motion, seconded by Agency Member Grzan to **amend** the motion to approve the \$50,000 in MTC grant and that the \$52,000 would be in the form of a loan with the understanding that staff and ACA would more specifically identify sources for fund repayment, outlining a plan for achieving the repayment of the loan and working with Council/Agency members to help achieve this. The ACA is to report every six months as to the status of the project and fundraising efforts.*

Vice-chairman Tate agreed with Mr. Warthan that this is a proposal that the City has to assist in making it work. He said that he would agree to assist raising funds as well. He noted that the City has stated its support toward public art, but that the City has not committed to it. He felt that it was time that the City did something.

Agency Member Carr stated that it was his belief that all five Council/Agency Members are committed to assist in fundraising efforts.

Vote: *The motion carried unanimously (5-0).*

Executive Director Tewes informed the Agency Board that staff would return within a few weeks with a loan agreement and a draw schedule for its approval.

City Council Action

OTHER BUSINESS:

13. AMENDMENT OF ORDINANCE NO. 1616, NEW SERIES REGARDING THARALDSON PLANNED UNIT DEVELOPMENT (PUD)

Council Member Sellers recommended that this item be continued in order to allow the Community & Economic Development Committee (CEDC) the opportunity to study this item further. When the CDEC has something more definitive to report, it would return to the Council with its report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Continued** this item in order to give the Community & Economic Development Committee the opportunity to further study this item.*

14. CONSIDERATION OF COUNCIL'S 2005 GOALS

City Manager Tewes presented the staff report, stating that it has been the Council's practice to review a written statement of the policies and goals discussed following its annual retreat. He indicated that the items reflect his note taking at the Council's retreat and that the organization of the draft policies and goals were his and do not reflect the Council's order, in terms of priority. He requested that the Council review the draft statement of policies and goals to see whether they correctly reflect those identified by the Council, including timelines.

Council Member Grzan said that it was his recollection that there was consensus to develop a policy that integrates creeks and streams with development. He requested staff support in becoming a Charter City.

City Manager Tewes noted that the policy relating to the integration of creeks and streams with development is listed as the very last item.

Mayor Pro Tempore Tate did not believe that the study of becoming a charter city should be included in the Council's policies and goals. It was his belief that this would be a study to be conducted by Council Member Grzan and staff this year to see if it is to be considered a goal for the Council next year. He did not believe that the Council endorsed this item.

Council Member Sellers referred to the budget policy relating to the use of a portion of the general fund. He noted that the second sentence of the third policy reads: "The portion of General Fund reserves that is less than the targeted 25% level and more than the absolute lower limit of 10% may be used for investments for the potential of very high returns either through expanded tax base or reduced operating costs." He noted that the second goal states that "By December 2005, the Financial Policy Committee will develop recommendations for that period after the Sustainable Budget has been achieved, which would address the use of reserve amounts that might exceed the targeted 25% level."

City Manager Tewes said that there was Council discussion about what the City would do with the reserves that exceeds the 25% level after the point where the City reaches a balance. It was his recollection that the Council stated that it wanted to adopt policies on how the City might be able to use the reserves above the 25% level (e.g., expand services, etc.). He clarified that the use of the terms "save or gain" would be for high returns or reduced operating costs. He stated that these would return as part of the City Manager's Fiscal Year 2005-06 budget recommendation.

Council Member Sellers felt that the Council needs to be more specific on how it defines the use of these funds. He understood that the Council would have an opportunity to review these as part of the budget process.

Mayor Pro Tempore Tate referred to the City Budget section of the draft Policies and Goals for 2005. He stated that he would like to take this goal a step further. It was his belief that what the Council did agree to what the City Manager captured. He clarified that the reason for the year long conversation with the public is so that the City would get to a point in 2006 where the Council proceeds with some form of new revenue. Although this is a 2005 goal, the Council is building to achieve a goal in 2006. He felt that the goal, as presented, makes it sound as though the Council is just talking about new revenue and not how they will be achieved. He recommended that wording be added to state that the Council is adopting a strategy and that there would be discussions about it in the future. The language could state that in November 2006, the Council will take a ballot measure to the community, following a lot of education and interaction with the public to receive their input/buy in, on a plan to increase City revenues. He referred to the Organization for Public Policy section. He recommended that a statement be included that stipulates that the Council has not concluded its discussion about this goal. Further, that it be stated that by the end of the year, the Council will review its new approach to the five Council committees and whether they need to be tuned up and/or changed at that point in time (e.g., include a statement that

reads “to be reviewed”). He referred to the Civic Engagement section where the Mayor will be suggesting a process for building community consensus. It was his belief that the Council stated that it would not be using the term “visioning” because there would be too much confusion with the Vision plans in place today.

Mayor Kennedy stated that the term “vision” has become trite and that the term has been overused. He would like to identify a better name for the process. He said that this goal is for the community to buy into the process that involves the public setting goals for the community.

Mayor Pro Tempore Tate noted that the Council agreed to adopt a City ethics policy. He recommended that the Council include a goal to adopt an ethics policy and that it be rolled out to the Boards, Commissions, and City employees. The Council is to review the ethics policy throughout the year(s) to see if there are ways to augment and/or improve the policy over time.

Council Member Carr referred to the City Budget section. He noted that the Council talked about a policy for replenishing reserves should the City drop below the 25% level. He recommended that the Financial Policy Committee have discussion on how to replenish the reserves should the City fall below the 25% level. He recommended a goal be included that addresses City employees/staff. In a tough budget year, he wants to make sure that the Council has a goal of achieving successful positive contract negotiations and a conclusion to this end within this year. He would like the Council to find a way to be able to recognize and enhance the employees within the City, recognizing them for the great work they perform.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Directed** staff to incorporate the additions identified this evening. Staff to redraft and return with the 2005 Goals for Council approval.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

Acting City Attorney/Agency Counsel McClure announced that the Council would be adjourning to closed session regarding closed session item 2 as listed below. He indicated that the Council/Agency Board does not need to discuss closed session item 1 this evening.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Government Code Section 54957.6
Agency Negotiators:	City Manager; Human Resources Director
Employee Organizations:	AFSCME Local 101 Morgan Hill Community Service Officers Association

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 10:25 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 11:06 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - MARCH 2, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:04 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, and Mayor/Chairman Kennedy
Late: Council/Agency Member Sellers (arrived at 6:09 p.m.)
Absent: Council/Agency Member Tate

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Acting City Attorney/Agency Counsel Siegel announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:07 p.m.

Council/Agency Member Sellers arrived at 6:09 p.m. and joined the Council/Agency Board in closed session.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:10 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Police Lieutenant Terrie Booten led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented certificates of recognition to Jon Maxey, Jim Tarp and Bob Foster for the installation of lights at the Community and Cultural Center.

PROCLAMATIONS

Mayor Kennedy presented a proclamation to Jenny Fisher with the American Cancer Society declaring Morgan Hill as a Colon Cancer Free Zone. Announced was the American Cancer Society's Relay for Life to be held on May 21 and 22. It was encouraged that the City of Morgan Hill put a team together.

PRESENTATION

The presentation regarding the Water Resource Protection Collaborative by the Santa Clara Valley Water District was deferred to a future meeting.

California Highway Patrol Assistant Chief Dwight Cargins indicated that a 10851 Pin (Auto Theft) is presented to an officer for recovering a minimum of 12 stolen vehicles in a twelve month period, three of which have to have custody arrests. Assistant Chief Cargins stated that Police Sergeant Swing recovered 6 stolen vehicles in an eight month period which resulted in custody arrests.

INTRODUCTIONS

Council Services & Records Manager Torrez introduced recent hire Larry Talbot as the City's Government Access Technician.

CITY COUNCIL REPORT

Mayor Kennedy indicated that he has been serving as a member of the Valley Transportation Authority (VTA) Advisory Committee and as an alternate to the VTA Board of Directors. He stated that there has been a lot of attention given recently with respect to BART. He said that it is the City of Morgan Hill's position that services that benefit Morgan Hill such as Caltrain, and bus services, are adequately

addressed in VTA's future plans. He stated that there was a recent memo sent from the Santa Clara County Board of Supervisors suggesting that they conduct a study to look at different funding sources for BART and many other services that were part of Measure A. He indicated that Measure A was overwhelmingly passed by the voters in 2000 and that it included an extension of BART from Fremont to San Jose, looping back up to Santa Clara. It also included the expansion of Caltrain services, light rail extensions, improvements in the bus transit system, and other issues related to transit. He said that individuals who voted in support of Measure A want to ensure that BART is delivered. He stated that this continues to be his position. He said that there is some activity among VTA Board Members to see if they can come up with other ways to deliver Measure A projects. He announced that starting next week, Council Member Sellers would be moving into the position of the VTA Advisory Policy Advisory Committee member and that he (Mayor Kennedy) will be focusing his attention on the Board of Directors as an alternate member for the City of Morgan Hill.

CITY MANAGER REPORT

City Manager Tewes reported that the results of the monthly testing of the City's domestic water wells for February; indicating that all wells registered none detect for the chemical perchlorate.

CITY ATTORNEY REPORT

Acting City Attorney Siegel stated that he did not have a report to present this evening.

CITY COUNCIL SUBCOMMITTEE REPORTS

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

B. Terry Mahurn said that last year the Santa Clara Valley Water District (SCVWD) raised water rates by 25%; noting that the rates increased from \$160 an acre foot to \$200 an acre foot. He indicated that he had a conversation about the rate increase with Public Works Director Ashcraft last summer. He inquired as to the services being provided by the SCVWD; indicating that he had the same conversation with Mr. Ashcraft's counter part in the City of Gilroy. Both advised that the Water District reads the meters on a regular basis and manage the groundwater and that no other services are provided by the Water District. If you look at what South County is being charged for the reservoir and ground water management, taking perchlorate off of the table, it is at a cost of \$7 million per year. He stated that he has met twice with Water District Board Member Rosemary Kamei and attended a Water District Board meeting asking for a breakdown of the \$7 million. He said that he received a partial, but incomplete answer. He inquired whether Mr. Ashcraft would be the authority on what is taking place in terms of the justification for the charges to residents or whether there was another staff member who could explain the rates as they are today in terms of the \$7 million for reservoir and groundwater management.

City Manager Tewes said that the responsibility for establishing the ground water extraction fee is the elected board of the Water District. He stated that the City of Morgan Hill' utility company has to pay the pump tax/extraction fee just as agricultural customers do, but at a higher rate for municipal customers. Therefore, the City of Morgan Hill has an interest in the components of the rate. City Staff recently made comments to the Board. As a result of City comments and comments made by others who have raised concerns, the Water District has decided not to move forward with a scheduled increase. He informed Mr. Mahurn that staff can give him as much information it has, but that this information comes from the Water District. However, the City of Morgan Hill shares the same interest in learning about sources and usage of the funds.

Mr. Mahurn stated that in the 18 years since the Central Valley project come through from the San Luis Reservoir, the groundwater rates have increased over 800%. He does not understand why the fees for managing ground water in South County have escalated to the extent that it has.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** Consent Calendar Items 1-8 as follows:*

1. **CONSIDER REQUEST FROM THE CENTENNIAL MORGAN HILL COMMITTEE FOR FUNDING ASSISTANCE**
Action: **Appropriated** \$29,500 of RDA Funds to the Centennial Committee.
2. **ESTABLISH APRIL 2005 AS THE MONTH TO INTERVIEW TO FILL VACANCIES ON THE LIBRARY AND PARKS & RECREATION COMMISSIONS**
Action: **Directed** Staff to Schedule Interviews in April to Fill Vacancies on the Library and Parks & Recreation Commissions.
3. **ACCEPTANCE OF DONATION FOR THE COMMUNITY AND CULTURAL CENTER HOLIDAY LIGHTING**
Action: **Accepted** Donation of Labor and Parts through the Hometown Holidays of Morgan Hill, Inc. and Individuals Jim Tarp and Jon Maxey.
4. **AMENDMENT TO CONTRACT PROVIDING PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**
Action: 1) **Approved** the Amendment to the Contract with Harris & Associates to Increase the Contract Amount by \$45,000; and 2) **Authorized** the City Manager to Execute the Contract Amendment, Subject to Review and Approval by the City Attorney.

5. **AMENDMENT TO ANNUAL CONTRACT WITH REPUBLIC ELECTRIC FOR TRAFFIC SIGNAL MAINTENANCE**
*Action: **Approved** the Amendment to the Agreement Dated July 7, 2004 with Signal Maintenance to Increase the Maximum Compensation from \$100,000 to \$145,000; Subject to Review and Approval by City Attorney.*
6. **APPROVE PAYMENT TO GRANITE CONSTRUCTION FOR EXTRA WORK RELATIVE TO THE ANNUAL ASPHALT MAINTENANCE CONTRACT**
*Action: **Approved** Payment in the Amount of \$21,245.75 to Granite Construction for Pothole Call-Outs in Excess of the Contracted Cost for Annual Pavement Repair.*
7. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR THE PREPARATION OF AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR BUTTERFIELD BOULEVARD**
*Action: **Authorized** the City Manager to Execute a Consultant Agreement for Preparation of an Addendum to the 1992 Environmental Impact Report (SEIR) with David J. Powers and Associates, Inc. for the Purpose of Extending Butterfield Boulevard South, From Tennant Avenue to Watsonville Road; Subject to Review and Approval by the City Attorney.*
8. **SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 16, 2005**
*Action: **Approved** the Minutes as Written.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Grzan, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 9 as follows:

9. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 16, 2005**
*Action: **Approved** the Minutes as Written.*

City Council Action

PUBLIC HEARINGS:

10. **ZONING AMENDMENT, ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS – Ordinance No. 1714, New Series**

Director of Community Development Molloy Previsich presented the staff report, indicating that the City's current ordinance allows a maximum of livestock animal per acre. In order to exceed two

animals, an animal use permit needs to be issued by the City Council, after recommendation by the Planning Commission. She informed the Council that the current ordinance does not distinguish between the keeping of livestock for commercial uses versus personal or private use. She indicated that the Planning Commission recommends the following modifications: 1) allow the keeping of livestock animals in residential zoning districts for private use; 2) adding a definition for corrals and private use; and 3) that a maximum of 2 adult livestock, regardless of type, and their immature offspring, may be kept for the first 40,000 square feet of lot area and 1 additional adult livestock and immature offspring for each additional 20,000 square feet of lot area. However, livestock will need to be securely enclosed in a corral, setback 50 feet from property lines.

Council Member Sellers inquired whether it would be appropriate to talk about land in terms of acreage such as ½ acre, 1 acre, etc., versus 20,000 square foot (approximately ½ acre or 43,560 square feet approximately one acre).

Ms. Molloy Previsich felt that the previous ordinance was geared more toward ranching and livestock commercial uses with close scrutiny by the Planning Commission and Council in granting the use permits that were revocable. She stated that it is the intent of this ordinance to recognize that Morgan Hill is a rural environment and that there are a number of lots. Therefore, keeping of animals is not unusual. She said that it is not the intent to require a use permit for landowners who have greater than an acre to apply for a use permit for exceeding 2 adult animals for personal use.

City Manager Tewes noted that should the Council amend the animal ordinance, it would only be effective in the City limits. When property is brought into the City limits for residential purposes, the property is often subdivided into square feet rather than acre(s).

Ms. Molloy Previsich concurred that when land is subdivided, the City talks about the number of square feet per lot and not number of acres per lot.

Mayor Kennedy noted that the ordinance, as proposed, would allow a property owner with five acres to have 10 adult animals on the property.

Council Member Carr noted that the immature offspring of 10 adult animals would also be allowed in the five acre scenario.

Council Member Sellers inquired whether the 50 foot setback would impact the number of animals allowed.

Ms. Molloy Previsich stated that the City is not the regulatory agency for keeping of animals, but that the City regulates zoning. Therefore, the City can establish the number of animals allowed. She felt that there would be some level of reason that comes in with regard to how much space any type of animal would require. She said that the City would establish a maximum number of adult livestock that can be placed on a parcel and will establish the location of the corral/fencing that needs to occur. If there is over crowding or other issues taking place, there would be other mechanisms in place to address these

concerns. She indicated that private use of livestock on residential parcels necessitates animals be kept 50 feet from the property line.

Mayor Kennedy opened the public hearing.

Mr. Dutra said that he has a 50-foot setback from the street and that a sidewalk is not in place in front of his residence. The area where he had the goats is all fenced; noting that there is a street that separates his home from his neighbors. He stated that he is well over 100 feet from the neighbors across the street. He said the goats were on an acre+ site. He indicated that the City received a complaint from the resident behind him who wanted to purchase a piece of his property to build a pool. He advised the resident that he could not split the property. He stated that he has had the goats on the property for over six years and never received a complaint. He noted that there is a piece of property on Monterey Road that has horses and cows five feet from the road. He indicated that he had the goats longer than the resident behind him has lived in her home. He understands that neighbors do not want the goats to rub against their fences. It was his belief that a five foot setback would be sufficient to prevent damage to fences. He informed the Council that his neighbors are willing to sign a petition to state that they want the goats back. He said that he would be willing to obtain a permit, if reasonable.

No further comments being offered, the public hearing was closed.

Council Member Carr stated that it was his understanding that Mr. Dutra did not apply for a permit to keep his five goats.

Ms. Molloy Previsich indicated that staff conducted research and found that a permit for the five goats had not been applied for.

City Manager Tewes informed the Council that the permit opportunity has always been available to Mr. Dutra, but that the Council requested that the Planning Commission consider expanding the number of animals allowed by right.

Ms. Molloy Previsich stated that there is some guidance in the existing ordinance that states that open enclosures, whether pasture land or corrals, shall not be 100 feet from the nearest school, church, hospital or dwelling used for human habitation other than the residence of the owner. There is also text that states that all open enclosures containing livestock, poultry, etc. shall be setback at least 30 feet from any traveled street.

Council Member Carr expressed concern that in the recommendation by the Planning Commission, it is making a one time situation worse. He felt that the City would be making this situation much more complicated and more difficult than it needs to be. He suggested that the Council forego the recommendation of the Planning Commission and state that the City has an existing process whereby Mr. Dutra can apply for a permit. He noted that no one has applied for a permit in 30 years.

Ms. Molloy Previsich stated that as part of the permit application, the Council would be called upon to make a finding that keeping of the additional livestock would not be detrimental to the health, safety, and welfare of the abutting properties.

Council Member Sellers shared the concern that by trying to solve the problem, the Council would be creating a much bigger one down the road. He said that there has been a desire to help in Mr. Dutra's situation. He noted that Mr. Dutra has had letters in support published in the Morgan Hill Times. He felt that there is good and bad associated with large animals (e.g., noise, smell, can cause dust and other issues). He said that there are a lot of public health and safety issues that need to be considered. He said that in order to move forward with the ordinance, he needs assurance that the City has come closer to addressing Mr. Dutra's valid issue and that the City is not making a situation worse.

Council Member Carr noted that the staff report states that staff could not find that an animal use permit has been issued in the past 30 years, the issue only arising with Mr. Dutra's situation. This resulted in the Council directing staff and the Planning Commission to research and create a new ordinance, one that is not very clear. He felt that the Council may be creating a situation that may be worse or more onerous than the existing ordinance. He felt that the permitting process that would allow more than 2 livestock animals per acre should remain flexible enough to solve the problems being faced in this one issue. If the issue is that of cost for the permit, he recommended that the City waive the fee for Mr. Dutra.

Council Member Sellers noted that Mr. Dutra's comments seem to imply that should the ordinance be adopted, his corral would not be sited far back enough.

City Manager Tewes said that whenever the Council changes a zone, the City cannot require a property owner who is in non conformance to comply with a new rule immediately.

Ms. Molloy Previsich said that once the ordinance is adopted, Mr. Dutra would be allowed to bring back his five goats if he has the allowable number of livestock allowed. Due to the fact that this has been an ongoing use and has been in existence, may mean that Mr. Dutra is not subject to the new development standard that a 50 foot setback for a corral be established. This is something that the Council may need to consider and take into account.

Mayor Kennedy noted that there was a fair amount of public interaction at the Planning Commission meeting. One comment was on the opposite side of the idea of leaving the ordinance as is. A speaker spoke about the negative impacts associated with animals. He wanted to get a sense of what public involvement there was at the Planning Commission level.

Ms. Molloy Previsich said that the comment pertained to roosters, noting that this is not a livestock animal or the type of animal addressed by the proposed ordinance before the Council.

Mayor Kennedy stated that the Council asked the Planning Commission to look at the ordinance and come up with recommendations; noting that they conducted a public hearing and have forwarded a recommendation to the Council. He stated his support of the changes recommended by the Planning

Commission, including the setback requirement. Although the setback requirement may be difficult, as residential growth occurs and housing gets closer to where animals exist, this needs to be taken into consideration in the way the Council addresses ordinance. He felt that there were some protections built into the ordinance.

Council Member Sellers stated that he shared some of the concerns expressed by Council Member Carr, but would agree to move forward with the recommended ordinance as it includes a grandfathering provision and includes setback requirements. He agreed that this is not the Morgan Hill of 30 years ago. As the City grows, setbacks need to be sufficient as they add protection. He stated that the animal control staff would address noise and other issues.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Waived** the Reading in Full of Ordinance No. 1714, New Series.*

Council Member Carr felt that the Council, in trying to solve a problem, may be causing more problems in the future. Whatever mechanism is put into place, he felt that it needs to be about looking at individual circumstances the City may be under; thus, his recommendation to waive the fee and provide flexibility. If this is one instance in 30 years, he felt that the City needs to look at individual circumstances; finding a way to make it work for all parties. He stated that he would prefer to retain the ordinance in place today.

Council Member Sellers felt that if there are to be problems with large animals in the future, it would be because they are adjacent to residential areas. He felt that the setback requirement would help prevent problems in the future.

Council Member Carr expressed concern that there may be a one acre homestead outside the city limits today and that some point in time, the property and surrounding properties may be incorporated into the city. Then, homes on small lots are built around this piece of properties with residents complaining about the livestock adjacent to them. He felt that this would still remain a non conforming use with the adoption of the ordinance and that the Council would not have the authority to enforce the setback and corral requirements. Therefore, the Council has not solved the problem.

Acting City Attorney Siegel indicated that if there are health and safety concerns, these concerns would not fall under zoning and would be a separate issue. As far as their existence on the property, the amendment would not change the problem, assuming no health and safety concerns exist.

City Manager Tewes did not believe that Council Member Carr's scenario would be likely to occur as the City would not annex residentially zoned property of sufficient size to allow the keeping of livestock as Measure C restricts the City's ability to annex such residentially designated properties.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council **Introduced** Ordinance No. 1714, New Series, by title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL***

APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS), by the following roll call vote: AYES: Grzan, Kennedy, Sellers; NOES: Carr; ABSTAIN: None; ABSENT: Tate.

11. ZONING AMENDMENT, ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT – Ordinance No. 1715, New Series

Director of Community Development Molloy Previsich informed the Council that this ordinance amendment was initiated by staff because it realized that 15 out of 38 minor exceptions considered in the past few years were for increases in allowable fence height. She indicated that the City has received 70 complaints about fence height violations. Staff conducted research and found that many cities allow more than six feet in height for side and rear yard fences. She stated that the building code states that for fences above the six foot portion of the fence, it has to be opened to passage of wind and light. The ordinance before the Council recommends that the City allow seven feet in height with the portion above six feet to be uniformly opened to the passage of light and air, as determined by the Community Development Director. In staff's research, staff found that most cities' fence ordinances require a greater setback on the street side setback of five feet. She informed the Council that the Planning Commission is recommending that this be the standard and that it would be a good idea to make it clear that barb wire, razor wire and electric fences are to be prohibited on lots used for residential purposes. It was further recommended that the "Minor Exception" section of the zoning code be amended to give authority to the Community Development Director to increase the fence height by one foot as it is the intent to keep the fence height at a maximum of eight feet.

Mayor Kennedy said that a resident brought to his attention that they reside at the end of a cul de sac and installed a five foot fence in the front yard to prevent deer from getting into their landscaping. Under this ordinance, it appears that the maximum front fence height would be three feet.

Ms. Molloy Previsich said that the front fence standard is three feet and that a property owner can request a minor exception for an additional two feet, to a maximum of five feet in the front setback. However, this has to be approved by the Community Development Department. She clarified that this is an existing provision in the current ordinance.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1715, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1715, New Series, by title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND***

MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

City Council Action

OTHER BUSINESS:

12. EFFECTIVE USE OF CITY COUNCIL ADVISORY BOARDS, COMMITTEES AND COMMISSIONS, INCLUDING WORKPLAN DISCUSSIONS

City Manager Tewes stated that the first part of this item is a recommendation that the Council consider the responses from two of the commissions that the Council referred specific questions to. He said that in his recommendations on the establishment of committees and commissions, he suggested a slight change in the jurisdiction of the Parks & Recreation Commission. He recommended that the Council shift some of its functions to a new Library Arts & Culture Commission. The Council asked these two commissions to review the changes. Recreation and Community Services Manager took the suggested changes to the two Commissions. He informed the Council that the two commissions agree to support the recommendations. However, they pointed out that the requirement of the adoption of a workplan by each of the commissions causes some problems for some of the commissions because of the expiration of terms. He recommended that the City Clerk explain how the City could bring the terms of the Commissions into conformity.

City Clerk Torrez informed the Council that she and Recreation and Community Services Manager Spier had the discussion about how the City could make the terms of the Commissions work, and yet allow them to participate in the development of the workplan as part of the budget process. It has been determined that should the Council allow recruitment in the months of November and December, the Council could conduct interviews in January with the Commissioners taking their respective seats in February. This timeframe would allow enough time for the full Commission, Committee and/or Advisory Boards to start planning and participate in the workplan process. She inquired whether the Council still believes a two year term sufficient for the advisory boards to perform the workplan; providing enough longevity to become seasoned commissioners. She indicated that all advisory boards have two year terms and that the Planning Commissioners are appointed to serve four years.

Recreation and Community Services Manager Spier recommended that the Youth and Advisory Committee remain as one year. Regarding the Parks & Recreation and Library Commissions, she said that it was her belief that they would prefer a three or four year appointment.

Council Member Grzan indicated that four year terms are common for commissioners.

Action: *Council Member Sellers made a motion, seconded by Council Member Grzan to **direct** staff to return with appropriate ordinance/policy amendments to change the schedule for recruitment interviews and appointments per staff's recommendation and changing the*

terms of office to four year appointments. The motion carried 4-0 (Mayor Pro Tempore Tate absent).

City Manager Tewes informed the Council that the second part of this item is at the request of Council Member Grzan; a discussion on how it would like to use and work with the citizen committees and commissions. He said that issues have been raised as to whether the Council would benefit from the advice and recommendations of the Commissions on more detailed matters in order to allow the Council to consider a specific recommendation from both staff and the commissions. He felt that it would be important to discuss under what circumstances individual Council Members communicate/work with commissions, and what is expected from commissions.

Council Member Grzan felt that there have been a couple of items that have come before the Council that he felt would have benefited from having the review of an advisory group or commission currently in place. One item, in particular, that could have been referred to the Parks & Recreation Commission was the aquatics issue that came before the Council. It was his belief that these types of issues could be aired appropriately with a resolution/recommendation being forwarded to the City Council. He felt that there were certain advantages in referring matters to commissions and advisory boards (e.g., airing differences, looking for solutions in a more comfortable/less formal atmosphere, make better use of Council time, etc.). He noted that the Council considered traffic calming issues and felt that it was an appropriate item to refer to the Planning Commission. He felt that the advisory groups were highly intelligent, and that they should be allowed to do their work.

Mayor Kennedy felt that one reason items/issues are not being referred to the Council's advisory groups may be attributed to the fact the public members bring items to the Council's attention. In the case of the aquatics center, he felt that there was a time constraint. The action taken by the Council was an action that would allow staff to move forward, noting that the matter will be going to the Parks & Recreation for final resolution. He felt that the Council needs to discuss why it tends to take on some of these issues.

Council Member Sellers agreed that the Council should take advantage of its advisory groups when it can. He recommended that the Council ask its Commissions, as part of their workplans, to identify their work load and to give thought to other items that they do not undertake they believe may be appropriate under their purview. He agreed that sometimes there are time constraints to address certain issues. He said that it would be helpful to have Planning Commission recommendations relating to speed bumps. However, because there is an expenditure associated with traffic calming measure, the Council was obliged to undertake the final discussion, and determine where the funds are to come from. He expressed concern that should the Commissions' scope of work expand significantly; it may result in citizens becoming less inclined to be part of an advisory group. If so, this would be self defeating. To the extent that commissions are willing to undertake additional work, he felt that the Council may be able to encourage participation.

Council Member Grzan said that he has heard from a few commission members that the Council was becoming too involved in projects that should be in front of them. Some commissioners feel that this is their job and that the Council is taking their job away from them, making them feel less valuable in this

regard. He supported giving the advisory commissions the ability to participate and provide feedback to highly visible projects that have significant implications.

Mayor Kennedy suggested that the Council collectively decide how or when the Council refers items to boards, commissions and/or committees. He inquired as to the criteria the Council would use to decide when to refer an item to a committee or commission.

Council Member Grzan recommended that almost every item go before the boards and commissions before coming before the Council.

Council Member Sellers said that if the work plans are structured the right way, the Council will know what items to refer to them. The Council could also state what items would be added to the scope of work of the boards and commissions before coming to the Council.

Council Member Carr felt that most of this has to do with the Council's action, how it is to operate in the future, and its comfort level. He noted that the aquatics center was largely handled by the Council because it drove the process in a manner that it could not wait for the next Parks & Recreation Commission meeting, or await for a recommendation to be forwarded to the Council. In the future, if patience is allowed, the Council could better utilize its commissions.

Council Member Grzan noted that in a week or two, the Council will be taking a look at recommendations for the community center (e.g., upgrades to doors, carpets, etc.). He said that the restructuring of the community center would be an appropriate use of the commissions. He felt that utilizing the boards and commissions make his time, as a Council member, more efficient and make the decision making process easier.

Mayor Kennedy inquired whether it made sense for the Parks & Recreation Commission to review the changes and additions to the community and cultural center before coming before the Council.

City Manager Tewes said that it is the Council's prerogative whether it believes it can benefit from another set of eyes reviewing the changes and additions. He indicated that both the Planning and Parks & Recreation Commissions have the responsibility for seeing and recommending the annual capital improvement programs (CIP). These recommendations will come to the Council in the CIP program. Therefore, these items will be before these two commissions as part of a larger set of capital investments. He said that staff has heard from the Council that it should look for opportunities, when there is time, to submit issues to the commissions for their review and advisory recommendation to the Council, along with staff's recommendation. He said that it is his sense that the most important time to be spent on this issue is in reviewing the workplans of the various boards, commission and committees. He did not recommend the Council simply rubber stamp the workplans that will come before the Council. This is where the Council should spend its quality policy time.

Action: *No action taken.*

13. CONSIDERATION OF COUNCIL'S 2005 GOALS

City Manager Tewes indicated that last week, staff presented a draft of the Council's 2005 policies and goals that reflect the actions considered at its retreat. As part of last week's discussions, the Council made a number of suggestions, requesting that he bring these items back for its consideration. He highlighted the changes requested by the Council. He recommended that the Council adopt the goals, should the Council concur with the changes made.

Council Member Sellers indicated that two items have started to emerge from Sacramento: 1) The League of California Cities has started to actively recommend member cities give consideration to tax measures. They are recommending that a long term approach be taken to the consideration of these measures. He said that a model that has been traditional used by school districts and other jurisdictions, but not by cities, is to retain consultants at the front end to assist in this process (e.g., polling consultants and campaign, policy, government relations consultant). He felt that it was important to keep this in mind in the implantation of a budget policy. 2) He is starting to hear more and more that Redevelopment Agencies will be a focus. He said that the League is pointing out that Redevelopment Agencies are being threatened in ways they have not been seen in the past. He felt that the Council needs to continue to actively monitor these as part of the process. Should the City be precluded from extending the Redevelopment Agency, there would be several things that would start to take place. He said that these two issues were comments more than a request for modification to the policies.

Mayor Kennedy referred to page 3, civic engagement and the process for building community consensus that he is tasked with presenting in July. He felt that this goal overlaps with the issue of new financing measures for the City. The question is what is important to the residents, what services do they want, and whether they were willing to pay for these services. He felt that the financial strategy for the future of the City, the future of the RDA, and involving the public in the process, are all intertwined. He noted that Council Member Carr and Mayor Pro Tempore Tate serve on the Financial Policy Committee. He did not know how the Council would merge the different ideas together, bringing together the reports from the different committees. He said that it may be a matter of having a Council meeting/workshop where the Council focuses on all of the information with respect to the RDA, and the financial strategy of the City's future, as well as involving the public in the process.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Adopted** the revised 2005 goals as presented by the City Manager.*

Mayor/Chairman Kennedy announced that the Dayworker Committee is holding a fundraiser dinner/dance on March 5 at 5:30 p.m. at St. Catherine's Church.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:47 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

Agenda Item # 15

Prepared By:

**Dep Dir PW
Operations**

Approved By:

Public Works Director

Submitted By:

City Manager

ACCEPTANCE OF PAVEMENT RESURFACING PROJECT

2003-04

RECOMMENDED ACTION(S):

- 1) Appropriate an additional \$16,688 in unappropriated Measure C CIP funds which accrue to the Public Facility/Non-AB1600 (346) Fund for this project.
- 2) Accept as complete the 2003-04 Street Resurfacing Project in the final amount of \$671,378.39, including approval of change orders 4, 5, 8, and 9.
- 3) Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY: The 2003-04 Pavement Resurfacing Project contract was awarded to Silicon Valley Paving Inc. by Council at its June 23, 2004 meeting. This project was awarded late in Fiscal Year 2003-04 rather than the late summer or fall of 2003 to avoid construction continuing into winter rains of 2003-04. Unfortunately, in spite of this, work still continued into the winter rains 2004-05. Three factors contributed to this. First, the work included coordination with the Union Pacific Railroad for the pavement rehabilitation of the rail road crossings of Tilton and San Pedro Avenues. This coordination took several months. Second, as work progressed it became necessary to direct the contractor to do a substantial amount of extra work necessitating an increase in the number of contract days needed to complete the work. And third, the work also included the remaining section of asphalt overlay of Monterey Road in the vicinity of Jasmine Square. Monterey Road from Dunne to the south city limits was overlaid in 2003 except for this section. This work had been delayed to occur after completion of utility work. This coordination effort required additional contract days for the 2003-04 Pavement Resurfacing Project.

The attached map illustrates the work scope done under the original contract and the major change order work. The following work was accomplished by contract change orders: Removal and replacement of pavement failure, slurry resurfacing, and new striping on E. Dunne Avenue from Hill Road to Peppertree Avenue, and on Vineyard Blvd. from Tennant Avenue to Monterey Road. Additional change orders work included: Crack sealing, raising of manhole and valve structures not a part of this project, additional permit and inspection fees for the Union Pacific Railroad and additional signing and striping work. The total change order cost for the project was \$114,174. This increased the project total cost to \$671,378.

FISCAL IMPACT: This project is a continuation of the 2003-04 Capital Improvement Program (CIP) Budget, Project # 519L04 with the following funding sources identified: 03/04 CIP \$450,000 (RDA=\$350,000), Morgan Hill Business Ranch Assessment District \$95,000, \$36,500 in Street Maintenance Operation Budget Funding and \$125,000 in carry-over funds from the unappropriated Street Fund Balance unspent from Fiscal Year 02-03 Pavement Resurfacing Projects. These funds totaling \$706,500 were available at the time of contract award. However, at the time of contract award Council allocated only the original contract amount of \$557,205 and a 10% contingency of \$55,720 for a total funding allocation of \$612,925. The total final contract cost for construction including change orders is \$671,378.

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
2003-04 PAVEMENT RESURFACING PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 9th day of July 2004, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Silicon Valley Paving, on June 23, 2004, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on February 16, 2005, accepted by the City Council on March 16, 2005, and that the name of the surety on the contractor's Maintenance Bond to guarantee all work is Travelers Casualty and Surety Company of America.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
 17555 Peak Avenue
 Morgan Hill, California

Dated: _____, 2005.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

ZONING AMENDMENT APPLICATION, ZAA-02-18: COCHRANE – IN-N-OUT BURGER

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting a one-year extension of time for the construction of two restaurants in the Tharaldson Planned Unit Development (PUD) located at the northwest quadrant of Cochrane Road and Highway 101. The two restaurants include a 3,253-sf drive-thru, fast food restaurant (In-N-Out Burger) and a sit down restaurant 5,000 to 6,500-sf in size.

The Tharaldson PUD includes five parcels of land, of which three are currently developed with two hotels and a gas station. The remaining two lots are undeveloped and were originally designated for two sit down restaurants. In May 2003, the City Council approved a zoning amendment application allowing for the replacement of the two sit down restaurants with one fast food restaurant and one sit down restaurant. As a condition of the zoning approval, the Council required that the sit down restaurant be under construction prior to the issuance of a building permit for the fast food restaurant. The Council also limited the zoning approval to two years after final adoption of the ordinance (May 7, 2003). Per Ordinance No. 1616 N.S., *"Should a fast food restaurant and sit down restaurant not be constructed in compliance with the adopted precise development plan and any other conditions imposed by this ordinance and applicable conditions of approval before the end of the two year time limit, this zoning amendment approval shall expire and any amendment to the previous zoning shall be null and void with the exception of paragraph 9(D) below."*

In-N-Out Burger is the property owner for both restaurant sites in the Tharaldson PUD. Since acquiring the properties, In-N-Out Burger has actively pursued sit down restaurants to locate adjacent to their fast food site. However, as noted in the applicant's Letter of Request (attached for the Council's reference), securing a sit down restaurant has proven to be a challenge. Within the past month, In-N-Out Burger has secured a lease agreement with the Denny's Corporation. However, In-N-Out Burger will not be able to meet their zoning approval deadline of May 7, 2005. Therefore, the applicant is requesting to extend their zoning approval by one additional year.

The Planning Commission reviewed the applicant's request at the February 22 Commission meeting, and recommended approval of the one-year extension of time by a vote of 5-1 with one modification. The Commission directed Staff to include only In-N-Out Burger in the application file name, deleting reference to Applebee's, in order to avoid any possible confusion in the future. One Commissioner voted against the extension request based on a fundamental belief that a fast food restaurant should not be allowed in a gateway location. For the Council's reference, copies of the February 22 Commission staff report and draft minutes are attached. Staff recommends approval of the one year extension of time.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 16

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1616 N.S. TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253-SF DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SF IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & - 024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the original zoning amendment application.
- SECTION 4.** The City Council hereby approves an amendment to Ordinance No. 1616 N.S. to grant a one-year extension of time for the construction of a 3,253-sf drive-thru fast food restaurant and a sit down restaurant 5,000 to 6,500 sf in size, thereby extending the zoning approval from May 7, 2005 to May 7, 2006.
- SECTION 5.** With the exception of the one year extension of time granted under this Ordinance, all other provisions of Ordinance No. 1616 N.S. shall remain valid and in full effect.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



MEMORANDUM

To: PLANNING COMMISSION

Date: February 22, 2005

From: COMMUNITY DEVELOPMENT DEPARTMENT

**Subject: ZONING AMENDMENT, ZAA-02-18: COCHRANE – IN-N-OUT
BURGER/APPLEBEE'S**

REQUEST

The applicant is requesting to amend the provisions of a zoning amendment approval for a 3,253-sf drive-thru, fast food restaurant and a sit down restaurant 5,000 to 6,500-sf in size. Specifically, the applicant is requesting a one-year extension of time for the construction of the two restaurants. (APNs 726-33-023 & -024)

RECOMMENDATION

Application, ZAA-02-18: Adopt Resolution No. 05-12, recommending Council approval of a one-year extension of time

Processing Deadline: July 31, 2005

BACKGROUND

In May 2003, the City Council approved a zoning amendment application allowing for the construction of a 3,253-sf drive-thru, fast food restaurant and a sit down restaurant 5,000 to 6,500-sf in size. The subject site is approximately 2.5 acres in size, and is located at the northwest quadrant of Cochrane Road and Highway 101 in the Tharaldson Planned Unit Development (PUD). As a condition of the zoning approval, the Council required that the sit down restaurant be under construction prior to the issuance of a building permit for the fast food restaurant. Furthermore, the Council limited the zoning approval to two years after final adoption of the ordinance (May 7, 2003). Per Ordinance No. 1616 N.S., *"Should a fast food restaurant and sit down restaurant not be constructed in compliance with the adopted precise*

development plan and any other conditions imposed by this ordinance and applicable conditions of approval before the end of the two year time limit, this zoning amendment approval shall expire and any amendment to the previous zoning shall be null and void with the exception of paragraph 9(D) below."

CASE ANALYSIS

In-N-Out Burger is the property owner for both restaurant sites in the Tharaldson PUD. Since acquiring the properties, In-N-Out Burger has actively pursued sit down restaurants to locate adjacent to their fast food site. However, as noted in the applicant's Letter of Request (attached for the Commission's reference), securing a sit down restaurant has proven to be a challenge.

In the recent months, the Denny's Corporation has expressed interest in building a restaurant in Morgan Hill and has entered into negotiations with In-N-Out Burger. However, In-N-Out Burger will not be able to meet their zoning approval deadline of May 7, 2005. Therefore, the applicant is requesting to extend their zoning approval by one additional year. In-N-Out Burger feels the one-year extension would be adequate as they anticipate having a signed lease agreement with Denny's by February 17, and Denny's is currently in the Site and Architectural Review process for their new building.

The extension of time request was originally agendized for the October 26 Commission meeting; however, the item was tabled due to public noticing issues. This item has been duly re-noticed for the February 22 Commission meeting.

RECOMMENDATION

Staff recommends adoption of Resolution No. 05-12, recommending Council approval of a one year extension of time for Application ZAA-02-18: Cochrane – In-N-Out Burger/Applebee's.

Attachments:

1. Resolution No. 05-12
2. Applicant's Letter of Request



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

ZONING AMENDMENT ZA-04-15/DEVELOPMENT AGREEMENT DA 04-04: HILL-GERA

RECOMMENDED ACTIONS:

1. Open/close Public Hearing
2. Approve Mitigated Negative Declaration
3. Waive the First and Second Reading of Zoning Amendment Ordinance
4. Introduce Zoning Amendment Ordinance
5. Waive the First and Second Reading of Development Agreement Ordinance
6. Introduce Development Agreement Ordinance

Agenda Item # 17

Prepared By:

Contract Planner

Approved By:

(Department Director)

Submitted By:

City Manager

EXECUTIVE SUMMARY: The applicant is requesting approval of a zoning amendment for a 17 lot residential planned development, and a development agreement covering 9 of the 17 lots. A Tentative Map for the 9 lots was unanimously approved by the Planning Commission on February 22, 2005. The project is located between Pear Drive and Jean Court along the west side of Hill Road.

The current zoning designation for the project area is Residential Estate (40,000) / Residential Planned Development. Approval of the Zoning Amendment would establish a precise development plan for the current 9 lot subdivision and future subdivision and development on four existing lots north of Jean Court. The precise development plan would relax the minimum parcel size and allow lots ranging from 30,000 to 40,888 square feet. Additionally, the plan would restrict the height of new homes to one-story. Staff is recommending approval of the relaxed lot sizes and height restrictions as (1) the use of graduated lot sizes and one story construction will provide for greater compatibility with surrounding development, and (2) it would allow a larger number of homes to join the existing and adjacent Orchard Park Home Owners Association located immediately to the south of the project area. Such a merger would enable greater efficiencies of infrastructure and maintenance, including the expansion of an existing park and detention pond at the end of Pear Drive.

This Development Agreement formalizes commitments made in Measure "P" application MP-02-17: Hill – Gera. The project was awarded 6 building allotments for Fiscal Year 2004-2005 and 3 allotments for Fiscal Year 2005-2006. The approved development schedule requires application for Site Review, Subdivision and Zoning Amendment no later than July 1, 2004 and commencement of construction no later than June 30, 2005. However, such an application was not received until August 10, 2004 and as such the property remains behind schedule. The delay in application was due to a lengthy annexation process resulting from the applicant's inability to obtain written consent from one of the affected property owners. After holding a Protest Hearing on August 18, 2004 the City Council unanimously approved the annexation on November 3, 2004.

The planning commission considered and approved the applicants Subdivision, Zoning Amendment and Development Agreement applications on February 22, 2005. Copies of the staff report, minutes, and site development plan / vesting tentative map have been attached for your reference.

FISCAL IMPACT: None. Filing fees were paid to cover the cost of processing these applications.



COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

MITIGATED NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT:

Date: September 23, 2004 **Application No.:** ZA-04-15/SD-04-05/DA-04-03/
SR-04-17: Hill - Gera

APN: 728-07-047, -048, -050, & -051 and 728-08-014 & -015

Address of Project: Northwest corner of Hill Road and Pear Drive

Applicant: George Gera
GERA CONSTRUCTION
19136 Springbrook Lane
Saratoga, CA 95070

Project Description: A request for approval of a zoning amendment, subdivision, development agreement and site review for the construction of nine single-family homes on an approximate nine-acre site located west side of Hill Rd., between Pear Dr. and Jean Ct. Approval of the zoning amendment application would establish a precise development plan for the nine-lot subdivision as well as four existing lots north of Jean Ct. (approx. 10 acres) which are proposed to be subdivided in the future to allow for the construction of four custom homes.

II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- ☐ The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION is hereby adopted.

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures have been added to the project, and, therefore, a **MITIGATED DECLARATION** is hereby adopted.

III. FINDINGS

Based on the findings of the Initial Study, the proposed project will not have a significant effect on the environment for the following reasons:

1. The project does not have the potential to significant degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.
2. The project will not have any significant adverse impacts on traffic or land use.
3. The project will not generate significant adverse effects on the water, air quality, or increase noise levels substantially.
4. In addition, the project will not:
 - a. Create significant impacts which achieve short-term, to the disadvantage of long-term environmental goals.
 - b. Create impacts which are individually limited, but cumulatively considerable to a significant degree.
 - c. Create environmental effects which will cause significant adverse effects on human beings, either directly or indirectly.

IV. CONDITIONS:

Water

- W-1. The project shall include post-construction structural controls including Best Management Practices (BMP) for reducing contamination in stormwater runoff, such as swales, drop inlets, etc. (i.e., permanent features of the project).
- W-2. Construction practices shall include use of erosion control devices, including hay bales and/or Petromat, and on-site retention to minimize contamination of stormwater runoff.
- W-3. Whenever possible, dust-proof chutes shall be used for loading construction debris onto trucks.
- W-4. All trucks removing debris from the site shall be covered.
- W-5. Internal haul roads shall be paved, sealed or stabilized to control dust from truck traffic. Paved haul roads shall be regularly swept or cleaned to remove accumulated dust.
- W-6. The project shall implement regular maintenance activities including sweeping, cleaning stormwater inlets, and litter control at the site to prevent soil, grease, and litter from accumulation on the project site and contamination of surface runoff. Stormwater catch basins shall be stenciled to discourage illegal dumping.

- W-7. The applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) for the review and approval by the State Water Resources Control Board (SWRCB). The new or updated SWPPP shall be prepared by the project sponsors, who shall provide a copy to the City along with evidence of its approval by the SWRCB.

Air Quality

- AQ-1. Water all active construction areas at least twice daily.
AQ-2. Water or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
AQ-3. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
AQ-4. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
AQ-5. Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
AQ-6. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
AQ-7. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
AQ-8. Enclose, cover, water twice daily or apply non-toxic binders to exposed stockpiles (dirt, sand, etc.).
AQ-9. Limit traffic speeds on unpaved roads to 15 mph.
AQ-10. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
AQ-11. Replant vegetation in disturbed areas as quickly as possible.

Biological Resources

- BR-1. The project shall comply with the Citywide Burrowing Owl Habitat Mitigation Plan, including but not limited to the payment of the development mitigation fee and completion of a preconstruction Burrowing Owl survey no more than 30 days before initial ground disturbance.
BR-2. Removal of any tree shall be subject to compliance with Chapter 12.32 of the Morgan Hill Municipal Code, Restrictions on Removal of Significant Trees. Should any tree be retained as part of the project, appropriate tree protection measures shall be implemented during construction activities.

Noise

- N-1. Construction activities shall be limited to the hours of 7:00 am to 8:00 pm, Monday through Friday, and 9:00 am to 6:00 pm on Saturdays. Construction activities shall not occur on Sundays or federal holidays.

Kathleen Molloy Previsich
Community Development Director

Date: _____

ORDINANCE NO. , New Series

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 4. The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The City Council hereby approves a precise development plan as contained in that certain series of documents dated January, 2005 on file in the Community Development Department, entitled "Lands of Gera: Site Development Plan / Vesting Tentative Map" prepared by M.H. Engineering. These documents show the exact location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. The approved project shall be subject to the following conditions:

1. Homes on Lots 1 through 9, 11, 12, 15, and 17, as shown on the site development plan shall be limited to single-story dwellings.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

EXHIBIT "A"

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this 16th day of March, 2005, by and between **George Gera**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;
- F. On March 16, 2005, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with

the Property Owner, and the Ordinance thereafter took effect on March 16, 2005.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:
 - (a) "City" is the City of Morgan Hill.
 - (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
 - (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
 - (d) "Real Property" is the real property referred to in Paragraph 3 below.
2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation
Exhibit "B" - Development Review and Approval Schedule
Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.
3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".
4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.
5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.
6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The

burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.
8. City's Approval Proceedings for Project. On March 23, 2004, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-17: Hill - Gera, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of nine single-family homes as approved by the City of Morgan Hill Planning Commission as follows:

Phase 1	FY 2004-05	6 supplemental allotments
Phase 2	FY 2005-06	3 supplemental allotments

9. Changes in Project.
 - (a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.
 - (b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.
 - (c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.
 - (d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill

Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

- (a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.
- (b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.
- (c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.
- (d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property

damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.
 - (a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.
 - (b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).
 - (c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.
13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.
14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Residential Estate and zoning classification of RE (40,000)/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

- (a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following safety features in the development:

- (i) One mounted fire extinguisher (rated 2A10BC) for the first 1,500 sf of floor space, plus one fire extinguisher for each additional 1,500 sf of floor space
- (ii) Outdoor lighting to meet all police department specifications
- (ii) Illuminated address numbers for each unit and painted curb numbers where possible
- (iii) Noncombustible siding materials on at least 50 percent of units, and on at least 50 percent on an individual unit
- (iv) Intrusion and fire alarm system monitored by a central station and which meets City ordinance
- (v) Residential fire sprinkler system according to NFPA Chapter 13D specifications in all units
- (vi) Automatic earthquake shut-off valves for gas service

- (i) Property Owner agrees to include the following open space and landscape improvements in the development:
 - (i) Continuous open space buffer along Hill Rd frontage 10 ft in excess of minimum requirement
 - (ii) Private open space areas will be maintained by a homeowners' association
 - (iii) Install a landscape island and gateway feature at Hill Road project entrance
 - (iv) One, 24-inch box size tree for each ten site trees; trees shall be from city approved list, with a minimum height of nine feet and spread of three to four feet
 - (v) Varied front yard landscaping installed by developer
 - (vi) Deciduous trees planted along south facing side of homes
 - (vii) 24-inch box street trees from city approved list; two per lot, three per corner lot
 - (viii) Drought tolerant grasses for lawn areas; no more than 25 percent of landscape area to be covered with lawn (calculation exclusive of park landscape area)
 - (ix) Water conserving, automatic irrigation system with minimum three separate valves and circuits for trees; shrubs and groundcover; and lawn areas
 - (x) Non-irrigated hardscape on at least 15 percent of landscape area (pedestrian walkways across circulation aisles not included)
 - (xi) Minimum 50 percent of all plant material will be water conserving plant material from the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide
 - (xii) Landscaping will be installed in all areas visible from public and private rights-of-way
 - (xiii) Eight existing significant trees will be preserved, including a 24-inch Oak tree which will be incorporated into a median island
 - (xiv) Large open space buffer along Hill Rd minimizes use of sound wall
- (j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.
- (k) Property Owner agrees to purchase **double** transferable development credits (TDC's) based on the ratio of one TDC for every 25 dwelling units (18/25ths of a TDC), subject to this development potential transfer mechanism. The Property Owner may also elect to pay **double** the open space fee at the rate of \$33,235 per TDC. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent TDC commitment as specified above. The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 1996. The base year may be adjusted by City Council Resolution prior to the filing deadline for each competition year. Payment of the double TDC or double open space fee shall be collected on a per unit basis at time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.
- (l) Property Owner agrees to include the following affordable housing features in the development:

- (i) Property Owner agrees to pay **double** the standard housing mitigation fee computed at 10 percent of the total project, payable to the City of Morgan Hill. Payment of half the double standard housing mitigation fee shall be provided prior to the issuance of the 4th building permit, and payment of the remaining half shall be provided prior to the issuance of the 7th building permit.
- (m) Property Owner agrees to include the following construction features in the development:
 - (i) Design and layout techniques will be used to provide maximum privacy for each home
 - (ii) Drywall will be source separated and recycled during construction
 - (iii) Cardboard containers and boxes will be source separated and recycled during construction
 - (iv) All nine units shall be single-story
 - (v) Two secondary dwelling units shall be provided
 - (vi) Install EPA “Energy Star” labeled windows with low-e coatings and vinyl frames, and install a high efficiency gas furnace with 90 percent efficiency rating or greater in all dwellings
 - (vii) Install additional insulation to achieve 15% reduction in energy use
 - (viii) Provide two separately zoned high-efficiency heating systems in all units
 - (ix) Install air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher in all units
 - (x) Install recirculating hot water system with demand pumping
 - (xi) Utilize materials and construction techniques for all homes that exceed current requirements as follows:
 - Cast-iron pipes and piping insulation
 - Future ready wiring to include RJ6 and CAT5R cabling for home networking, broadband access, and telephone communications systems
 - Class A, light weight (or better) concrete roofing tiles
 - TJI floor joists
 - Units plumbed for gas (along with 220 volt wiring) at all dryer locations
 - (xii) At least 25 percent of units will incorporate porches visible from the public right-of-way
 - (xiii) A minimum of two different roof lines and roof pitches will be utilized throughout the project
 - (xiv) Building materials provided on front elevations will be wrapped on all four sides of the units along with window trims and designs.
 - (xv) Different base and trim colors will be used on each home.
 - (xvi) Over 75 percent of unit entrances will be visible from the public right-of-way
 - (xvii) Minimum five-ft front and rear setback variation between units
 - (xviii) Provide variation in garage placement
 - (xix) Sound insulation board if necessary will be provided on Lots 1 & 9 (along Hill Road), and AC units will be located away from property lines
- (n) The Property Owner agrees to provide the following circulation improvements:

- (i) Install a six-ft wide paved walkway across Bamdad project (Tuscany Meadows) located on Hill Rd on route to Nordstrom School, or provide other improvements as deemed appropriate by the MHUSD and the city at a value of \$3,000 per unit
 - (ii) Provide full street improvements (including curb, gutter and sidewalk) along both sides of Jean Court, as well as all utilities
 - (iii) Obtain dedication and construct off-site improvements along Hill Road along the Gomez property frontage (APN 728-03-020) at a minimum cost of \$66,400
- (o) The Property Owner agrees to provide the following Storm Drain improvements:
 - (i) City maintained storm lines will be constructed within paved areas of the streets
 - (ii) Project will expand existing detention pond on adjacent Orchard Acres site
 - (iii) Applicant will contribute \$1,000 per unit for off-site storm drain improvement fund
 - (iv) Applicant will contribute \$1,000 per unit to the Capital Improvements Program Fund
- (p) The Property Owner agrees to provide the following park and recreation improvements:
 - (i) Applicant will pay triple in-lieu park fees or \$6,000 per unit, whichever is less
- (q) Water mains either new or existing shall be gridded on Pear Drive back to Hill Road.
- (r) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.
- (s) The project shall provide the following information, by address for each unit, to the Community Development Department:
 - (i) Date of sale
 - (ii) The number of bedrooms
 - (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

- (a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this

Agreement.

- (b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.
 - (c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.
 - (d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.
 - (e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.
- 16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.
- 17. Periodic Review.
 - (a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.
 - (b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.
- 18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.
- 19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies

specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:
 - (a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;
 - (b) Property Owner gives the City written notice of its decision to terminate this Agreement;
 - (c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or
 - (d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.
21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:
 - (a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;
 - (b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.
22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:
 - (a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.
 - (b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.
 - (c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

- (a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.
- (b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

- (a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.
- (b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:
 - (i) Punitive damages;
 - (ii) Damages for lost profits;
 - (iii) Damages for expenditures or costs incurred to the date of this Agreement.
- (c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: George Gera
19136 Springbrook Lane
Saratoga, CA 95070

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.
- (b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.
- (c) This writing contains in full, the final and exclusive Agreement between the parties.
- (d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

- 15 -
EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-17: Hill - Gera

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

- 16 -
EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02-17: HILL – GERA
FY 2004-05 (6 units), FY 2005-06 (3 units)**

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	August 10, 2004
II. SITE REVIEW APPLICATION	
Application Filed:	August 10, 2004
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	March 31, 2005
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2004-05 (6 units)	March 31, 2005
FY 2005-06 (3 units)	January 31, 2006
V. BUILDING PERMITS	
Obtain Building Permits:	
FY 2004-05 (6 units)	May 15, 2005
FY 2005-06 (3 units)	March 31, 2006
Commence Construction:	
FY 2004-05 (6 units)	June 30, 2005
FY 2005-06 (3 units)	June 30, 2006

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least five (5) dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

- 17 -
EXHIBIT "C"

LEGAL DESCRIPTION
MP-02-17: HILL - GERA

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All that certain real property situated in an Unincorporated Area, County of Santa Clara, State of California, described as follows:

Lot 89, Map of MORGAN HILL RANCH MAP NO. 1, filed June 1, 1892, in Book G of Maps, at Pages 2 and 3, Santa Clara County Records.

APN: 728-08-014; 728-08-015



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 16, 2005*

ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting to amend the City Sign Code to increase the maximum allowable sign area for on-site freestanding signs in Commercial and Industrial Zoning Districts from 48 sf to 50 sf.

On November 18, 2004, the Architectural Review Board (ARB) reviewed a sign permit application for The Ford Store at Morgan Hill. The ARB approved the building attached signs, however, could not approve a proposed monument sign because the sign exceeds 48 sf in size. The standard Ford logo monument sign is 49.54 sf, which exceeds the City standard by 1.54 sf.

Under the provisions of the Municipal Code, there is no established procedure which would allow City Staff or the ARB to approve signs that exceed City standard. Therefore, the applicant is requesting to amend the Sign Code to allow for the larger Ford logo monument sign. Specifically, the applicant is requesting approval to amend Section 18.76.250.H.1.b of the Sign Code to increase the maximum allowable sign area for on-site freestanding signs in Commercial and Industrial zones from 48 sf to 50 sf. It should be noted that the applicant researched the option of building a custom sign that would comply with City standards; however, the cost to construct the custom sign would exceed \$100,000. The cost to construct the standard Ford logo sign is \$17,030.

Staff recommends approval of the sign code amendment, with an added restriction that the increased sign area apply only to Commercial and Industrial Planned Unit Developments (PUDs). By limiting the amendment only to PUDs, it would allow the City greater control over the design of the signs. All other Commercial and Industrial-zoned properties would be subject to compliance with the 48 sf maximum sign area.

At the February 22 Commission meeting, some Commissioners expressed concern with the proposed increased sign area. It was noted that many areas are zoned PUD, particularly along the freeway, and it is likely that many of the property owners will want to build their monument sign at the maximum allowed size. In an effort to limit the number of sites that would be allowed to construct the larger 50 sf signs, it was the consensus of the Commission to add a lot size requirement to the sign amendment. The Commission voted 5-1 to allow for the increased sign area only in Commercial and Industrial PUDs as recommended by Staff, with the added requirement that the lot on which the sign is located must be at least five acres in size. The Ford Store site is approximately six acres, and therefore, would be allowed to construct a 50-sf monument sign should the Council approve the Commission's recommendation action. For the Council's reference, copies of the February 22 Commission staff report and draft minutes are attached to this report.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 18

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.76.250.H.1.B OF THE SIGN CODE TO INCREASE THE MAXIMUM ALLOWABLE SIGN AREA FOR ON-SITE FREESTANDING SIGNS ON LOTS FIVE ACRES OR GREATER IN SIZE IN COMMERCIAL AND INDUSTRIAL PLANNED UNIT DEVELOPMENTS FROM 48 SQUARE FEET TO 50 SQUARE FEET (ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. Section 18.76.250.H.1.b of the Morgan Hill Municipal Code is amended to read as follows:

18.76.250.H.1.b Commercial and industrial zone signs, On-site Freestanding Signs

Sign area: Sign area shall not exceed one square foot of sign area per each lineal foot of building frontage, up to a maximum of *50 square feet for lots five acres or greater in size and zoned Commercial PUD and/or Industrial PUD, and up to a maximum of 48 ~~forty-eight~~ square feet for all other Commercial and Industrial zones.* Up to an additional 36 square feet of sign area may be added to the *48 ~~forty-eight~~* square feet maximum for a permanent year round farmers market use. The additional 36 square feet of sign area shall only contain pricing for seasonal specials and must be incorporated within the same sign structure as permitted in the first part of this paragraph. A minimum of *24 ~~twenty-four~~* square feet of the area of such signs shall be devoted to business identification.”

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



MEMORANDUM

To: PLANNING COMMISSION

Date: February 22, 2005

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS (FORD STORE)

REQUEST

The applicant is requesting to amend the City Sign Code to increase the maximum allowable sign area for on-site freestanding signs in Commercial and Industrial Zoning Districts from 48 sf to 50 sf.

RECOMMENDATION

Application, ZA-05-02: Adopt Resolution No. 05-14, recommending approval of the zoning text amendment

Processing Deadline: August 19, 2005

BACKGROUND

On November 18, 2004, the Architectural Review Board (ARB) reviewed a sign permit application for The Ford Store at Morgan Hill. The application included building attached signs and a monument sign proposed at the Condit Road frontage. The ARB approved the building attached signs, however, requested minor modifications to the monument sign base. The ARB also directed the applicant to reduce the monument sign to no more than 48 sf in accordance with code requirements.

CASE ANALYSIS

The applicant is requesting approval to amend Section 18.76.250.H.1.b of the Sign Code to increase the maximum allowable sign area for on-site freestanding signs in Commercial and Industrial zones from 48 sf to 50 sf. As noted in the applicant's Letter of Request (attached for the Commission's reference), the standard Ford logo monument sign is 49.54 sf, which exceeds

the City standard by 1.54 sf. Under the provisions of the Municipal Code, there is no established procedure which would allow City Staff or the ARB to approve signs that exceed City standard. Therefore, the applicant is requesting to amend the Sign Code to allow for the larger Ford logo monument sign.

The applicant has researched the option of building a custom sign that would comply with City standards; however, the cost to construct the custom sign would exceed \$100,000. The cost to construct the standard Ford logo sign is \$17,030.

Staff has reviewed the applicant's request, and recommends approval of the increased monument sign size. However, Staff recommends that the increased sign area apply only to Commercial and Industrial Planned Unit Developments (PUD). By limiting the amendment only to PUDs, it would allow the City greater control over the design of the signs. All other Commercial and Industrial-zoned properties would be subject to compliance with the 48 sf maximum sign area.

RECOMMENDATION

Staff recommends approval of the zoning text amendment, subject to the findings and conditions of Resolution No. 05-14.

Attachments:

1. Resolution No. 05-14
2. Applicant's Letter of Request



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

WATER CONSERVATION SUBMETERING ORDINANCE

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The City's water supplies are limited and efforts are needed to ensure that City policies, practices, and requirements encourage the efficient use of water. National research has shown that multifamily dwellings that have their own water meter use, on average, 15% less water than multifamily dwellings that do not have their own water meter. Because of the substantial savings this represents, staff included the development of a submetering ordinance in the Water Conservation Workplan adopted by the City Council on September 1, 2004.

The proposed ordinance will require that all new multifamily dwellings have their own water meter. This reflects the current practice and trend for multifamily development in Morgan Hill as most of the market rate apartments built in the last decade have been constructed with individual water meters. Staff has discussed the proposed ordinance with the primary developer of below market rate housing in Morgan Hill, South County Housing, and has specifically prepared the ordinance to address their concerns. In their experience, there are times when the specific layout of a site does not easily facilitate the installation of City-standard water meters. On these occasions, the proposed ordinance provides for internal submeters that the owner of a development must read and use to apportion the total site's water costs to each unit. Staff believes that this option will be rarely used, but including it provides needed flexibility.

Staff recommends that the proposed ordinance be introduced in order to encourage the efficient use of water by multifamily residents.

FISCAL IMPACT: No budget adjustment is requested at this time.

Agenda Item # 19

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTIUNIT DWELLINGS

WHEREAS, the City of Morgan Hill recognizes that there is a limited supply of water available to serve the residents and businesses of Morgan Hill; and,

WHEREAS, the City of Morgan Hill wishes to encourage the efficient use of water in order to optimize the use of the limited supply; and,

WHEREAS, independent research has concluded that residents of multi-family units that pay for their own water use an average of 15% less water;

WHEREAS, a necessary first step in getting multi-family residents to pay for their own water is to require the installation of dedicated water meters for each separate unit.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Section 13.04.130 of Chapter 13.28 (Water Services) of Title 13 (Public Services) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

13.04.130 Meters – Required - Installation

- A. All customers of the municipal water supply system must have a water meter properly installed to accurately measure the amount of water consumed in any period of time. The city shall furnish the required meters and installation shall be made by employees of the city; provided, however, that the reasonable cost of the meter and installation shall be charged to the customer.
- B. For the purposes of this Section, “all customers” is defined to include both residential and commercial customers.
 - 1. Residential customers include any and all residential developments including, but not limited to, single family homes, townhomes, condominiums, mobile home parks, each unit of multiunit residential developments, and each residential unit of mixed-use developments.
 - 2. Commercial customers include any single nonresidential building, any landscape only account, and any segment or portion of a nonresidential building that can be individually owned.
- C. The owner of a multiunit residential development or a mixed-use development that includes habitable dwellings, may, upon compliance with the following, install separate submeters to each residential unit in lieu of installing separate meters directly to the

municipal water system.

1. The owner must obtain a permit from the Public Works Department for the submeter system.
2. Any submeters shall accurately and completely measure all water consumed from the municipal water system.
3. The owner shall agree to charge the tenant of each unit a water utility charge strictly based on the consumption by the occupants of the unit.
4. Installation, maintenance, and monitoring of the submeter system shall be the responsibility of the owner, and in no circumstances shall the City be responsible therefore.
5. If any water conservation plan is implemented or imposed by the City, the owner shall be responsible for complying with any reductions required by such plan as measured by consumption on the meter(s) directly connected to the municipal water system.

Failure to abide by the above conditions, and/or any other conditions the City may impose, may result in revocation of any permit issued and/or other action as authorized by law.

Section 2. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 16, 2005

Agenda Item # 20

Prepared By:

Deputy Director PW

Approved By:

Department Director

Submitted By:

City Manager

PROPOSED VEHICLE REGISTRATION SURCHARGE FOR SANTA CLARA COUNTY

RECOMMENDED ACTION: Accept report from Council Regional Planning and Transportation Sub-committee and consider adoption of attached Resolution supporting the proposed Senate Bill 680 (Simitian) imposing a \$5.00 surcharge on vehicle registrations in Santa Clara County annually for a period of eight years to fund specified transportation improvements.

EXECUTIVE SUMMARY: The Silicon Valley Manufacturing Group (SVMG) is promoting a bill that would impose a \$5.00 annual surcharge on vehicles registered in Santa Clara County to fund traffic congestion relief projects and to assist with freeway and expressway litter removal and landscape restoration. Collection of the surcharge would begin July 1, 2006 and sunset on July 1, 2014 (eight years). The bill is being introduced by State Senator Joe Simitian and co-authored by Senator Alquist and Assembly members Ruskin, Coto, Cohn, Torrico, Laird and Salinas.

The Council Regional Planning and Transportation Sub-committee will consider this request at their March 11, 2005 meeting and provide their recommendation at the Council meeting.

The proposed bill is modeled on Assembly Bill 1546 which Senator Simitian successfully carried for San Mateo County last legislative session authorizing up to \$4 per vehicle registered in San Mateo County for five years to pay for congestion relief programs and storm water prevention plans. The proposed AB 680 empowers the Valley Transportation Agency to enact the surcharge and administer the program by adopting a resolution with 2/3 majority.

It is expected that a total of \$56 million will be raised over the eight year period. Transportation representatives from the 16 Santa Clara County cities and the County collaborated on a spending plan, which is attached. The Department of Motor Vehicles takes 1% for administrative costs. The remainder breaks out as follows: Caltrain capacity improvements - \$4M, litter removal and landscape restoration - \$4M, Tier 1 County Expressways - \$16M, local street and road operational improvements (competitive) - \$16M, and local street and road improvements (return-to-source) - \$16M. Motor vehicle owners in Morgan Hill will benefit in two ways. First, the congestion relief efforts on the Caltrain line and on the expressways will benefit commuters who work in the San Jose area or those who visit or shop there. Secondly, a portion of the funds will be spent on Morgan Hill streets to help relieve congestion here. The City is guaranteed approximately \$330,000 for local projects which comes from the City's pro-rata share of \$16M return-to-source portion. The City will also be eligible to compete for projects tapping the \$16M competitive portion. Staff feels confident that it has legitimate and viable projects that will compete well in this category. Lastly, to ensure that even more funds from this program are spent in the Morgan Hill area, Santa Clara County staff has indicated that they will recommend to the Board of Supervisors that their return-to-source funds be spent in the South County area.

FISCAL IMPACT: There is no fiscal impact with this action. The proposed surcharge will not take effect unless the Legislature and the Governor approve the bill and after the VTA Board of Supervisors approves it with a 2/3 majority.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL SUPPORTING SB 680, PROPOSING A
FIVE DOLLAR SUPPLEMENT TO VEHICLE
REGISTRATION FEE**

WHEREAS, Santa Clara County is a county within the State of California; and

WHEREAS, Santa Clara County is the largest and most populous county in Northern California with highly urbanized, rural, and mountainous areas; and

WHEREAS, the locally owned and operated County Expressway system, local arterials and rural county roads are the workhorses of Santa Clara County's road system, carrying the vast majority of all trips by all modes other than rail; and

WHEREAS, the Caltrain rail system relieves pressure on Santa Clara County's local roadway by replacing medium distance auto trips; and

WHEREAS, the County Expressways, local arterials, county roads and the Caltrain system are in need of improvement, modernization and upgrades to the traffic signal systems; and

WHEREAS, the lack of adequate litter control and landscaping restoration on the state highways and County Expressway systems is creating aesthetic and environmental problems; and

WHEREAS, state and federal funding for transportation projects have been inadequate to meet Santa Clara County's transportation needs; and

WHEREAS, current local funding sources are inadequate to fill the gap; and

WHEREAS, other counties within the State of California have enacted temporary supplements to the Vehicle Registration Fee (VRF) levied on vehicles registered within their borders to meet local transportation needs; and

WHEREAS, SB 680 proposes a five dollar (\$5.00) supplement to the VRF on vehicles registered within Santa Clara County for a term of eight (8) years; and

WHEREAS, SB 680 proposes to use these funds for local transportation system improvements on the County Expressway System, local arterials, rural county roads and the Caltrain system and for litter control and landscape restoration on state highways and County Expressways; and

WHEREAS, Morgan Hill is an incorporated City within Santa Clara County; and

WHEREAS, the City Council of the City of Morgan Hill wishes to submit a formal resolution of support to the State Legislature for SB 680; now

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that it supports the goals of SB 680 and encourages the California State Legislature to adopt and the Governor of California to sign SB 680 into law.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 16th Day of March, 2005 by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on March 16, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk